

ILLINOIS POLLUTION CONTROL BOARD
August 15, 1972

ENVIRONMENTAL PROTECTION AGENCY,)
)
 Complainant,)
)
)
 V) PCB 72-189
)
DEAN M. PENN AND WALTER DEEMIE,)
)
)
 Respondents.)

Larry R. Eaton, Assistant Attorney General, for the Environmental Protection Agency;
Thomas J. Penn, Jr. for Respondent Penn and Wilbur D. Dersch for Respondent Deemie.

OPINION AND ORDER OF THE BOARD (by Mr. Parker):

Respondent Penn owns property near Peoria, Illinois upon which Respondent Deemie operates a refuse disposal facility pursuant to a lease from Penn entered into in March of 1971.

Prior to Deemie's commencement of operations in 1971, and since at least as early as 1963, the refuse disposal facility had been a large pit approximately 100 feet deep into which garbage and trash including glass, trees, bushes and old automobiles and appliances were dumped indiscriminately (R. 11, 18, 25, 27, 41). The pit had been infested with rats and posed a serious danger to children playing nearby (R. 12, 36, 39). Since becoming a lessee in 1971 Deemie has conducted fill operations, primarily with building demolition wastes, which fill has covered over some of the trash and garbage. As a result the pit is now only 20 to 40 feet deep (R. 11, 24).

The Complaint charges Respondents with operating the facility without an Agency permit, and with causing or allowing open dumping of garbage and refuse on December 29, 1971, January 25, 1972 and March 23 and 24, 1972. Respondents are also charged with failing on one or more of those dates a) to provide portable fencing around the fill site, b) to properly spread and compact refuse admitted to the site, c) to provide proper daily cover at the facility, and d) to properly conduct salvage operations and to prohibit scavenging operations at the facility. The Agency requests an order that Respondents be required to apply for an Agency permit and that the facility be closed if the permit application is denied, that Respondents be required to cease and desist from violations in accordance with a compliance program approved by the Board, and that monetary penalties be assessed.

At the public hearing, which was held on July 14, 1972, the Agency and Respondents stated that they had arrived at an agreement, to be reduced to writing, concerning the factual issues raised by the Complaint (R. 7-9). The only witnesses who testified at the hearing were several residents who lived near the refuse disposal facility. These neighbors said they were generally favorably impressed with Respondents' accomplishments in filling the pit and would like to see the filling operations continue until the pit is completely filled, at which time they feel that the neighborhood property values will be increased (R. 10-12, 17-18, 23, 27-28, 36, 43-44).

Following the public hearing Respondents and the Agency filed two separate documents with the Board, one entitled "Stipulation and Proposed Order" containing eight paragraphs of stipulated facts (and no proposed order) and the other entitled "Order".

The Stipulation admits the facility has not been registered either with the Illinois Department of Public Health or the Illinois Environmental Protection Agency as a refuse disposal site. It also admits that no operating permit has ever been obtained, although Respondent Deemie has twice made permit applications which have been rejected by the Agency for inadequate information (par. 3).

The Stipulation also acknowledges that two Agency inspectors (Mssrs. Diefenbach and Lambert), and an Agency photographer (Mr. Vollmer), if called to testify, would describe their observations and photographing of open dumping of garbage and refuse, failure to provide portable fencing, failure to properly spread and compact refuse, and failure to provide proper daily cover, all as charged in the Complaint on each of the four dates alleged therein (pars. 4-6). Respondent Deemie would, according to the Stipulation (par. 8), admit "that the testimony of the inspectors and photographer for the Environmental Protection Agency is substantially correct, and that the violations that they have testified to and which have been alleged in the Complainant's Complaint herein were essentially true, and that the pictures taken by Mr. Vollmer, which are attached hereto, accurately depict the site". Respondent Penn would testify, according to the Stipulation (par. 7), that he had believed Deemie was complying with the laws and regulations concerning dumping activity, and that accordingly Respondent Penn's had been only a "passive negligence".

While the photographs attached to the Stipulation show great quantities of uncovered refuse at various locations in the pit, we note from the Stipulation (par. 8) that Respondent Deemie compacted and covered this refuse on the evening following taking of the photographs, that he keeps a supervisor at the site at all times and that he has a cable extending across the front of the site to prevent entrance by trespassers.

The Order submitted for our review provides for a meeting between Respondents and the Agency in July, and for Respondents either to close the dump site with a final cover if no permit is obtained as a result of the meeting, or to apply for a permit no later than August 31, 1972. The Order also calls for the dump site to be closed permanently if, as a result of failure or inaction on the part of the Respondents, no permit is obtained by December 31, 1972. Finally, the Order calls for payment by Respondents of a penalty, levied jointly and separately, in the amount of \$750.00 for the admitted violations.

The Clerk of the Board was informed by Respondents' attorneys via telephone on August 14, 1972 that Respondents are proceeding with plans to apply for a permit and do not plan to shut down at this time.

We find that the stipulated facts and the record evidence support the basic thrust of the proposed order, which we adopt to the extent indicated below. While the magnitude of the \$750.00 money penalty is perhaps on the low side, we believe it is justified in this instance by Respondents' present recognition of, and resolve to abide by, the laws and regulations concerning dumping. We also believe the emphasis should properly be placed here on the abatement plan rather than the money penalty since Respondents' filling operation has a desirable goal and should be encouraged to the extent that the pit will eventually become filled up thereby reducing the health and safety hazard posed to the community.

This Opinion constitutes the Board's findings of fact and conclusions of law.

ORDER

1. Respondents shall cease and desist from causing or allowing open dumping of garbage and refuse in their dump site located near Peoria, Illinois.
2. Respondents shall apply for an Agency permit to conduct fill operations no later than August 31, 1972.
3. In the event that as a result of failure or inaction on the part of Respondents no permit is obtained by December 31, 1972, the dump site will be closed permanently with final cover.
4. Respondents shall within 35 days after receipt of this Order pay a penalty of \$750.00 by check payable to Fiscal Services Division, Environmental Protection Agency 2200 Churchill Road, Springfield, Illinois 62706. This shall be the responsibility of Respondents jointly and severally.

I, Christian Moffett, Clerk of the Pollution Control Board, certify that the Board adopted the above Order and Opinion this 15th day of August, 1972, by a vote of 5-0.

Christian Moffett