

ILLINOIS POLLUTION CONTROL BOARD  
October 10, 1972

ENVIRONMENTAL PROTECTION AGENCY, )  
  ) )  
                                  Complainant, )  
  ) )  
                                  vs.  )                   PCB 72-25  
  ) )  
MARK J. BOWEN AND BEATRICE  ) )  
WENSLAND,  ) )  
                                  Respondents.                                  ) )

Dennis Fields, Assistant Attorney General for the EPA  
Frederick Orion, Attorney for Respondent

OPINION AND ORDER OF THE BOARD (by Mr. Henss)

The Environmental Protection Agency charged that Respondents, in violation of the Environmental Protection Act and the Rules and Regulations for Refuse Disposal Sites and Facilities, operated an unregistered refuse disposal site in LaSalle County, Illinois, allowed open dumping of garbage and other refuse, and deposited refuse in such manner as to create a water pollution hazard. Respondents denied the allegations and in particular denied that they operated a refuse disposal site on their property. When the case was called for hearing on the merits the parties submitted a Stipulation of Facts and Proposal for Settlement. Photographs and other exhibits were attached to the Stipulation but no oral testimony was heard.

The Stipulation reveals that for the past thirty years Respondents have owned approximately 70 acres situated at the west edge of Sheridan in LaSalle County, Illinois. A gravel plant operated on the property many years ago, and when the gravel plant ceased operations the land was left with a large pit into which parts of the gravel plant and other refuse were dumped. Much of the dumping occurred prior to the acquisition of the land by Respondents in 1942, but the pit has also been used for dumping since that date. Some of the dumping has been without the permission of Respondents by persons unknown to them. It is said that the only authorization given by Respondents for anyone to make use of the pit as a disposal site was permission given to the municipal officials of the Village of Sheridan to put cuttings from dead elm trees, broken up street pavement and sidewalks into the pit. Respondents have had "No Trespassing" or "No Dumping" signs posted upon the premises since they purchased it. It

is stated that Respondents have not operated the pit as a disposal site or received any consideration for dumping rights.

Subsequent to the filing of the EPA Complaint Respondents posted additional signs forbidding dumping or trespassing and employed earthmovers to cover an area where most of the refuse was situated. Photographs taken by EPA investigators in September 1971 prior to the earthmoving operation show paper, concrete, tires, tree limbs, furniture, wood crates, building materials, various types of scrap metal such as cans, a bed spring a metal tub, wire and rusted automobiles in the pit. Some of the debris is located in standing water. Photographs taken in August 1972 show that most of the debris has been covered with dirt. One pile of tree limbs and some of the tires and automobile parts which were located in the water are still visible, however, it is stipulated that approximately ninety percent of the refuse was covered with earth. The cost of the bulldozing of earth was \$2,365.

With reference to the debris located in water, the Stipulation says "This pit is located on private property and is not connected with any body of water of the State of Illinois".

The Stipulation states the desire of Respondents to cooperate with the Environmental Protection Agency in curbing the use of the pit as a disposal site and recommends that no penalty be assessed for past violations.

We find from the stipulated facts and the photographs that Respondents' expenditure of funds has resulted in significant improvement of the area. An expenditure of \$2,365 is no minor item in view of the fact that Respondents had not used the pit to produce income and it has no income producing capacity for the future. Respondents' cooperation with the Agency and their expenditure of funds to cover and clean up the area are certainly mitigating factors in our assessment of financial penalties.

One photograph, however, taken in September 1971 persuades us that Respondents were not entirely the unwilling victims of their friends and neighbors. The photograph shows a sign which states:

"Stop at auction house for rules. Restricted dumping.  
No garbage. Enforced. All rubbish over edge."

This sign indicates the owners' apparent deliberate intent, after the enactment of the Environmental Protection Act, to use the pit for the purpose of open dumping. It constitutes an invitation the public might find difficult to ignore. We believe that deliberate violations cannot go unpunished even where subsequent remedial action has been taken by the violator. Therefore,

a penalty of \$200 will be assessed in this matter.


It is not clear from the record what can be done to achieve further improvement at the gravel pit. We have noted that debris is still located in standing water and we will require that final clean-up of the area be accomplished to the satisfaction of the Environmental Protection Agency. The bare statement that this gravel pit "is not connected with any body of water of the State of Illinois" is not completely convincing. It seems to us that pollution of ground waters is a possibility which must be considered by the EPA in determining what the final clean-up shall be. Our Order will give the Agency the discretion to approve final cover and clean-up.

ORDER

It is ordered that:

1. Respondents cease and desist from their violations of the Environmental Protection Act and the Rules and Regulations for Refuse Disposal Sites and Facilities.
2. That Respondents complete the clean-up and cover of debris at the gravel pit to the satisfaction of the Environmental Protection Agency.
3. That Respondents shall pay to the State of Illinois by November 28, 1972 the sum of \$200 as a penalty for the violations found in this proceeding. Penalty payment by certified check or money order payable to the State of Illinois shall be made to: Fiscal Services Division, Illinois EPA, 2200 Churchill Drive, Springfield, Illinois 62706.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order was adopted this 10<sup>th</sup> day of October, 1972 by a vote of 5 to 0.

  
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Christan L. Moffett, Clerk  
Illinois Pollution Control Board