

ILLINOIS POLLUTION CONTROL BOARD

November 22, 1974

DONALD F. CONAWAY,)
 Complainant,)
)
 v.) PCB 74-282
)
EDWARD PATTON, Jr.,)
 Respondent.)

Mr. Donald F. Conaway, attorney for Clinton County.
Mr. Edward Patton, Jr., appeared without counsel.

OPINION AND ORDER OF THE BOARD (by Dr. Odell)

On July 20, 1974, the State's Attorney for Clinton County filed a Complaint with the Pollution Control Board (Board) and alleged that the Respondent had, since July, 1973, caused or allowed the open dumping of garbage in violation of Section 21(a) of the Environmental Protection Act (Act) and carried on refuse collection without a permit in violation of Section 21(e) of the Act. The Respondent lives with his mother at 1015 Beecham Street, Centralia, Illinois. He owns Lots 9, 10, and 11 of Second Pullen Heights Subdivision; his mother owns Lots 24, 25, 26, 27, and 28, Block 1, Pullen Heights, across the street from his property. All eight lots allegedly were involved in the violations.

A hearing was held at the Clinton County Courthouse in Carlyle, Illinois on September 23, 1974. The ten photographs entered into evidence (Compl. Ex. 1 to 10), the testimony of two area witnesses, and admissions by the Respondent establish that Sections 21(a) and (e) of the Act have been violated during the time period specified in the Complaint. Garbage is observed in Compl. Ex. 1; a witness testified to observing garbage on the premises near the home owned by the mother (R. 32, 49, 50). Respondent admitted collecting boxes and sacks of empty beer cans (R. 52-54). Compl. Ex. 3, 4, 5, and 7 show the extent of the refuse collection activity around the house. Respondent admitted accumulating the refuse (R. 52) and not having a permit to do so (R. 51-52).

Respondent admitted that on three occasions in the last three years local courts have found him guilty of maintaining a public nuisance because of his dumping activities on the eight lots (R. 55, 56). It appears that in 1972 Mr. Patton, pursuant to court order, paid \$700.00 to have the properties cleaned up (R. 56).

Respondent offered little evidence in the way of mitigation. He stated that he has cleaned up some of the refuse and would continue to do so (R. 49).

We are aware that a continuum exists from the private habits of individuals, in which neighbors have no legitimate interest, to the operation of an extensive disposal facility bearing a high degree of accountability to local citizens. The Board abstains, if possible, from exercising its jurisdiction over personal disagreements between neighbors. In this case, we believe that area residents have sufficient interest to warrant Board action. Eight different lots are under the Respondent's control, the dumping has been of long duration, and significant amounts of refuse have been deposited on the properties.

While the Board realizes the economic limitations of Respondent's position, it seems clear that neighbors need not tolerate the manner in which Respondent makes use of the lots owned by himself and his mother. A program of compliance carried out with supervision from the Environmental Protection Agency (Agency) is the best method of protecting the interests of area residents. Follow-up after compliance has been achieved will be necessary. We urge the Agency to carry out periodic inspections at the facility so that the interests of area residents will be protected. Since the remedy sought, as expressed in the Complaint and at the hearing, focused on the need for clean-up and continued good housekeeping practices, the Board will not assess any penalty in this case.

This constitutes the findings of fact and conclusions of law of the Board.

ORDER

IT IS THE ORDER of the Pollution Control Board that:

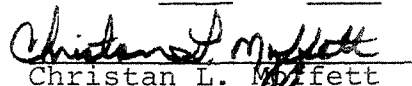
1. Respondent shall clean up the refuse and garbage from the eight lots and cease and desist from violating Section 21 of the Act by April 1, 1975.

2. Respondent shall post a performance bond with the Agency in the amount of \$1,000 in a form acceptable to the Agency by February 1, 1975. The bond shall be mailed to the State of Illinois, Fiscal Services Division, Environmental Protection Agency, 2200 Churchill Road, Springfield, Illinois 62706. On or about April 1, 1975, the Agency shall inspect the eight subject lots located on Beecham Street to see whether the clean up has been carried out. If the Agency finds that the Board's Order has not been implemented, the Agency shall arrange to immediately have the affected areas cleaned up with payment to be made out of Respondent's performance bond. The remainder of the bond shall then be returned to Mr. Patton.

IT IS SO ORDERED.

Mr. Dumelle dissented.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 22ND day of November, 1974, by a vote of 3 to 1.


Christan L. Moffett