ILLINOIS POLLUTION CONTROL BOARD
August 8, 1972

ENVIRONMENTAL PROTECTION AGENCY	)	
v.	)	PCB 71-381
RAYMOND A. PETERSEN AND PETERSEN SAND and GRAVEL, INC., an Illinois Corporation	)	

Roger Horwitz, Assistant Attorney General for the Agency
Kenneth Glick, Esq., for the Respondents

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

This is an enforcement action alleging that the respondents operated a refuse disposal site in violation of the Illinois Environmental Protection Act and the Rules and Regulations for Refuse Disposal Sites and Facilities. The site is located in Libertyville Township, Lake County, Illinois. The alleged violations include operating without a State permit, open dumping of refuse, failure to confine dumping to the smallest practical area, failure to spread and compact refuse as rapidly as refuse was admitted to the site, failure to provide daily cover, causing or allowing refuse to be deposited in standing water and causing, threatening or allowing contaminants to be deposited upon the land in such place and manner so as to create a water pollution hazard. The violations were specifically observed by Agency inspectors on September 3, September 8, September 22, and October 12, 1971.

Partial hearing was held on June 12, 1972. On June 25 the parties filed Stipulation and Proposal for Settlement with the Board wherein the respondents admit to all the alleged violations. It is stipulated that the respondent, Raymond A. Petersen obtained the site in 1952 and commenced operations as Petersen Sand and Gravel, Inc. thereon for purposes of extracting and removing gravel, dirt, sand, and clay. Beginning sometime in 1955, respondents began allowing various customers and others to dump waste materials on a portion of the subject property.

The respondents represent that the site will be closed to any further acceptance of refuse until such time as they are in compliance with applicable local ordinances and obtain a State permit from the Agency. Also, all refuse has now been properly covered and if a wash-off of cover occurs, any exposed material will be promptly covered. The respondents further represent that whatever refuse may remain in standing water or in such a position as to be a water pollution hazard will be promptly removed.

It is finally stipulated between the parties that the Board enter an order:

(a) Requiring the Respondents to close the site to the acceptance of any further refuse until such time as Respondents have complied with applicable local ordinances and also obtained a permit from the Agency.

(b) Requiring Respondents to completely cover any refuse which becomes uncovered due to wash off of cover and to remove any refuse which remains in standing water or which poses a water pollution hazard.

(c) Requiring Respondents to cooperate in further future inspections of this site by the Agency, in order to assure compliance with the applicable statutory and regulatory standards.

(d) Requiring Respondents to pay a penalty in the amount of $300 for violations of the Act and Regulations.

(e) That the Respondent will install a monitoring well at a location to be selected by the Agency.

The proposed settlement is acceptable to the Board except for one item -- the $300 penalty is far too low. Based solely upon what was observed by Agency inspectors, there were seven separate violations committed on each of four days thus totaling twenty-eight specific violations. A penalty of only $300 would mean that the respondents would pay around $10 for each violation. There is little question that if the respondents had committed only one single violation on only one day they would certainly receive a penalty many times more than only $10. The Board does not accept the principle of "cheaper by the dozen" in its assessment of penalties.

In addition we feel that the violation of operating for years without a State permit is particularly serious. The permit process serves two important functions in the prevention of pollution: First, the filing of a permit

application gives the Agency the opportunity to investigate the situation to determine whether the future operation of the activity will be done in a manner so as to cause a minimum amount of environmental contamination. Second, once a permit is issued the Agency has actual knowledge that the activity is being conducted and therefore is in a position to make routine periodic field investigations to determine whether the activity is being conducted in violation of the pollution laws and regulations.

In the instant case the Agency neither had the opportunity to investigate the site based upon a permit application nor was it put on notice that the site was in operation until after it would have known had the respondents gotten a permit earlier. It is obvious that the pollution at the site would have ceased long ago if the respondents had applied for a permit; either no permit would have been issued, or else if one did issue, the Agency would have been in a position to detect the violations long before it did because it would have known that the site was being operated. Landfills carry with their operation potentially severe environmental hazards. If the gravel pit in which this refuse was placed has no natural impermeable barrier, such as a clay bottom, then the contamination of the aquifer may be certain and in terms of our perspective, permanent.

Another significant point in this case is the testimony of numerous residents in the area of the landfill site. Their testimony shows that they are angry about the smell of garbage, the noise, the dust, the fires, the probable contamination of their wells and the uncooperative and abrasive attitude of the respondents. They really cannot be blamed for their desire to live unmolested. Admittedly, most of the issues raised by the residents are not before us in this case but some of them are.

Consequently, we cannot accept a $300 penalty in this case. There is no argument of poverty. The respondent is not a part-time operator eking out a living. An evidently thriving sand and gravel business should have and could have followed the law. We order that the Agency and respondents renegotiate and arrive at a penalty more in line with what the Board has decided in previous holdings and with what we feel to be appropriate under the circumstances of this case or go to a full hearing as provided for by law.

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

ORDER

The Stipulation and Proposal for Settlement is rejected. The parties shall either arrive at a new proposal in conformity with this opinion or else conduct a full hearing whereafter the Board will take the entire matter under advisement.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 8th day of August, 1972 by a vote of 5-0.

Christan L. Moffett

Christan L. Moffett, Clerk
Illinois Pollution Control Board