

ILLINOIS POLLUTION CONTROL BOARD  
May 3, 1973

ENVIRONMENTAL PROTECTION AGENCY )  
 )  
 ) #72-506  
 v. )  
 )  
 JOHN McINTOSH and MARY McINTOSH )

DALE R. TURNER AND THOMAS A. CENGEL, ASSISTANT ATTORNEYS GENERAL,  
APPEARED ON BEHALF OF ENVIRONMENTAL PROTECTION AGENCY  
RAYMOND A. LAWLER OF HARRIS & LAMBERT, APPEARED ON BEHALF OF  
RESPONDENTS

OPINION AND ORDER OF THE BOARD (BY SAMUEL T. LAWTON, JR.):

Complaint was filed against John McIntosh and Mary McIntosh alleging that with respect to certain property owned by the Village of Spillertown in Williamson County, Respondents, during a period beginning in May, 1972, have caused or allowed the open dumping of garbage in violation of Section 21(a) of the Environmental Protection Act, caused or allowed the open dumping of refuse in violation of Section 21(b) of the Act, deposited refuse on public property which is not a sanitary landfill in violation of Section 21(c) of the Act and conducted a refuse disposal operation without an Agency permit in violation of Section 21(e) of the Act. The foregoing events are also alleged to violate Rules 1.01 requiring registration of the site, 1.03 requiring approval of the Agency for the conduct of refuse disposal and 3.04 prohibiting open dumping of refuse, of the Rules and Regulations relative to refuse disposal sites and facilities during the same period. Complaint also alleged that on or about September 1, 1972, Respondents caused or allowed open burning of refuse in violation of Section 9(c) of the Act and Rule 3.05 of the Rules and Regulations for Refuse Disposal Sites and Facilities.

Before considering the merits of the case, it is necessary to dispose of certain motions made by Respondents. Respondents have filed a motion to dismiss, endeavoring to characterize the present complaint as a criminal proceeding and has alleged that the Environmental Protection Act is so vague as to preclude adequate preparation of a defense and consequently, constitutes a denial of due process in violation of the Constitution of the State of Illinois and the United States. Respondents also contend that the imposition of a penalty by an administrative body constitutes an unlawful delegation of authority and that the Rules and Regulations as applied to Respondents constitute an

improper delegation of legislative authority.

Respondents likewise contend that they are entitled to "face the Board" and that the complaint is inadequate in failing to allege sufficient facts to apprise Respondents as to their liability as charged. Respondents have also filed a Jury Demand and moved to suppress evidence on the grounds that it was improperly obtained without a search warrant. The motion to dismiss the complaint, the Jury Demand and the motion to suppress evidence are all denied. All contentions raised with respect to the constitutionality and vagueness of the Environmental Protection Act, the characterization of the proceeding as a criminal action, the improper delegation of judicial and legislative authority and the right to a trial by jury have been answered and disposed of by previous decisions of this Board and the Illinois Appellate Court and need not be discussed. See Environmental Protection Agency v. Granite City Steel Company, #70-34, 1 PCB 315 (March 17, 1971); Modern Plating v. Environmental Protection Agency, #70-38, 71-6, 1 PCB 531 (May 3, 1971); and Environmental Protection Agency v. C. M. Ford, #71-307, 3 PCB 503 (January 20, 1972). The conduct of an administrative hearing by a Hearing Officer subject to ultimate decision by the Board is a recognized practice at both the State and Federal levels, and no reason suggests itself why Respondents are entitled to "face the Board". Nor do we find the complaint inadequate in failing to apprise Respondents of the violations charged. Any further specification or amplification needed could have been obtained through pre-trial procedures provided in the Rules and Regulations of the Pollution Control Board. Cf. EPA v. Parks, #72-484; PCB \_\_\_\_\_ (May 3, 1973).

Lastly, no evidence has been designated that was improperly obtained and we are not apprised as to what evidence Respondents seek to have suppressed or the reasons therefore.

Hearing was held on the complaint on February 15, 1973. While the question of ownership of the property is not an issue, it appears from the record that the subject property was controlled by Respondents. The testimony of Agency witnesses sustains the essential allegations of the complaint. Persons residing in the immediate area testified to their own observations of dumping of tree limbs and concrete in May of 1972 (R. 19), garbage consisting of rotten potatoes and onions equivalent to 400 wheelbarrows in June, 1972, muskmelons and corn in September, 1972 (R. 27), the dumping of roofing and siding in September, 1972 (R. 28) and open burning in September, 1972, (R. 29). Testimony indicates that the totality of the operation generated odors and smoke, induced the growth of maggots and constituted a severe and unwarranted nuisance in the immediate area. Testimony of Environmental Protection Agency personnel confirmed all of the foregoing. A hog enclosure and boiler appear to have been deposited during the fall of 1972, which condition continued into the winter of 1973. Complainant's Exhibits 1, 2, 3, 5 and 6 depict the condition of the premises, reflecting the open dumping of trash, wood, concrete and garbage, as alleged.

Testimony further indicates that John McIntosh has maintained a hostile attitude toward the Agency and other law enforcement officials who have sought to cause Respondents to bring the operation into compliance. It is difficult to tell the theory on which Respondents are defending the case. The area involved is approximately 35 feet in length by 12 feet in width. While relatively small in size compared to other landfill sites that we have been concerned with, there is no question that Respondents have caused open dumping of refuse and dumping without a permit, have failed to take the necessary steps to compact and cover that which has been dumped and have caused open burning of refuse in violation of the Act and Regulations. Respondents contend that they had permission to burn which is not supported by the record and that what dumping took place was to prevent erosion. We do not feel these contentions are meritorious. Nor are we persuaded by the argument of counsel that Respondent's chief defense is that they have been harassed by the Environmental Protection Agency and law enforcement officers "and that if they would have handled this differently, he would have cleaned it up." (R. 184).

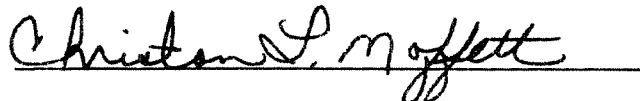
We will direct the Respondents to take all necessary steps to bring the site into compliance with the relevant regulations and statutory provisions, to cease and desist all violations and impose a penalty in the amount of \$750 for the violations aforesaid.

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

IT IS THE ORDER of the Pollution Control Board:

1. Respondents, John McIntosh and Mary McIntosh, shall, within 15 days from the date of this Order, bring the premises subject to this proceeding into compliance with all relevant Regulations and statutory provisions with respect to the operation of refuse disposal sites.
2. Respondents, John McIntosh and Mary McIntosh shall cease and desist all violations of the Regulations and statutory provisions with respect to operation of refuse disposal sites and facilities.
3. Penalty in the amount of \$750 is assessed against Respondents, John and Mary McIntosh for violations of Section 9(c), Sections 21(a),(b),(c) and (e) of the Environmental Protection Act and Rules 1.04, 1.03, 3.04, 3.05, as found in this proceeding. Penalty payment made payable to the State of Illinois by cash or certified check shall be made to: Fiscal Services Division, Environmental Protection Agency, 2200 Churchill Drive, Springfield, Illinois 62706.

I, Christan Moffett, Clerk of the Pollution Control Board, certify that the above Opinion and Order was adopted on the 3<sup>rd</sup> day of May, 1973, by a vote of 4 to 0.

  
Christan S. Moffett

