

ILLINOIS POLLUTION CONTROL BOARD
March 29, 1973

ENVIRONMENTAL PROTECTION AGENCY)

v.)

PCB 72-200)

CITY OF DU QUOIN and)
UNITED ELECTRIC COAL COMPANY)

MAURICIO DOMINGUEZ, SPECIAL ASSISTANT ATTORNEY GENERAL, FOR THE
ENVIRONMENTAL PROTECTION AGENCY;
JERRY B. SMITH, FOR CITY OF DU QUOIN; R.K. PEEK AND R.N. GRADY
FOR UNITED ELECTRIC COAL COMPANY

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

This case was filed by the Environmental Protection Agency on May 10, 1972, against the City of Du Quoin and United Electric Coal Company. The complaint charged United Electric as owner and Du Quoin as operator of a refuse disposal facility located near Du Quoin, with operation of a refuse disposal facility without a permit in violation of Section 21(e) of the Environmental Protection Agency ("Act"); causing or allowing dumping of garbage in violation of Section 21(a) of the Act; causing the open dumping of refuse in violation of Section 21(b) of the Act; causing or allowing open burning of refuse in violation of Section 9(c) of the Act; open dumping of refuse in violation of Rule 3.04 of the Rules for Refuse Disposal Sites and Facilities ("Rules"), remaining in effect pursuant to Section 49(c) of the Act; causing or allowing open burning in violation of Rule 3.05; failure to provide proper daily cover in violation of Rule 5.07(a); failure to provide proper final cover in violation of Rule 5.07(b); and failure to provide adequate vector control in violation of Rule 5.09.

United Electric Coal Company filed a general denial and two affirmative defenses culminating in a Motion to Dismiss the complaint against it. The first affirmative defense is that it has not been in possession of the land since 1954 and is therefore not accountable under the Act. The second affirmative defense, consists of a lease between United Electric and the City of Du Quoin. This lease states in part "Lessor hereby gives to the lessee the right and privilege

at all times during the continuance of this lease to use said leased premises for a city garbage dump and the lessor shall in no manner be held liable for same." As to the affirmative defenses, the fact that a person has leased a parcel of land to another person and is not in possession of the land does not absolve that person of his responsibility to comply with the laws of the state. Whether or not a civil action against the lessee lies for recovery of any penalties assessed against United Electric is not the concern of this Board. Accordingly, we find that the company's affirmative defenses are without merit and therefore deny the Motion to Dismiss.

The City of Du Quoin and the Agency filed a Stipulation which in effect admits the violations as alleged in the complaint. The Stipulation includes the following language:

"The dumping area was not confined. The garbage and refuse was frequently mixed with trees and brush. As a consequence, it was difficult to compact the garbage and refuse and to provide the required daily and final cover. At all times mentioned in the complaint, the amount of uncovered refuse varied from time to time from a minimum of approximately 200 feet of exposed face to approximately 1,000 feet of exposed face. The exposed face, from time to time, became so steep that spreading and compacting and providing the daily and final cover was difficult with the equipment located on the premises. The employees at the refuse disposal site left the premises at 5:00 p.m. during Monday through Friday and at 3:00 p.m. on Saturday. However, refuse material continued to be deposited on the premises by contractors and other persons served by the refuse disposal site. As a consequence, the dumping was unsupervised and deposited at random in the various areas of the dump. In addition, the refuse was not spread, compacted and provided with daily cover. There has been no evidence of open burning upon said premises within the last year."

The photographs submitted as Agency Group Exhibit 1 through 5 graphically document this unfortunate situation. The situation has improved subsequent to the filing of the complaint. The City is in the process of obtaining a permit for the facility (Stipulation, pp. 2-3) and recent inspections (Respondent's Exhibits 1 and 2) have shown that the dumping has been confined and that the proper daily and final cover is being provided. Brief quotes from the Agency inspection reports indicate the progress being made. In the Agency inspection of September 27, 1972 (Respondent's Exhibit 1) the inspector states "Site is showing definite improvement." From the Agency inspection of November 27, 1972 (Respondent's Exhibit 2) the inspectors state: "Present opera-

tion is confined, spread, compacted and fairly well covered." The City's attempt to upgrade the facility are described by the mayor of Du Quoin. He states that he fired the previous operator (R. p.4). He has obtained information on proper operation from the Illinois Municipal League (R. p.2), from the Agency (R. p.5), and from consulting engineers (Stipulation, pp. 3-4).

We find that the City of Du Quoin and United Electric Coal Company have violated the Act and Rules, with the exception of open burning, as alleged by the Agency. The Stipulation, and the copious sets of photographs submitted as EPA group exhibits 1 through 5 provide more than adequate support for such findings. United Electric is found in violation although they did not actively participate in the operation. We have consistently held that ownership confers responsibility on the owner to comply with the law. United Electric cannot contract away its obligation to obey the Act. See EPA v. Producers Mining et al, PCB 72-403.

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

ORDER

1. The City of Du Quoin and United Electric Company are each penalized \$500 for violations of the Act and Rules as found in the Opinion. Payment shall be made by certified check or money order payable to the State of Illinois, and shall be sent to Fiscal Services Division, Illinois Environmental Protection Agency, 2200 Churchill Road, Springfield, Illinois 62706, said payment to be made within thirty-five (35) days from the receipt of this Order.
2. Respondents shall cease and desist from further violations of the Act and Rules, except that Respondents shall have 120 days from the date of this Order to obtain a permit pursuant to Section 21(e) of the Act to operate the facility.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted by the Board on the 24th day of March, 1973, by a vote of 5 to 0.

Christan L. Moffett

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