

ILLINOIS POLLUTION CONTROL BOARD
March 6, 1980

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,)
)
Complainant,)
)
v.) PCB 79-77
)
RANDOLPH COUNTY LANDFILL AND SALVAGE, INC.,)
a Delaware corporation; S & L SANITATION, INC.,)
a Missouri corporation; ROGER L. RINNE;)
LARRY G. HENDERSON; and JOHN C. HENDERSON,)
)
Respondents.)

MR. PATRICK J. CHESLEY, ASSISTANT ATTORNEY GENERAL, APPEARED ON BEHALF OF THE COMPLAINANT.

MR. ARLIE E. TRAUGHBER, ATTORNEY AT LAW, APPEARED ON BEHALF OF RESPONDENTS RANDOLPH COUNTY LANDFILL AND SALVAGE, INC., LARRY G. HENDERSON, AND JOHN C. HENDERSON.

MR. GERALD S. REED, ATTORNEY AT LAW, APPEARED ON BEHALF OF RESPONDENTS S & L SANITATION, INC. AND ROGER L. RINNE.

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

This matter comes before the Board on the April 5, 1979 Complaint brought by the Illinois Environmental Protection Agency ("Agency"). On May 17, 1979, the Agency filed a Motion to Amend its Complaint and an Amended Complaint. On May 24, 1979, the Board granted the Complainant's Motion to Amend the Complaint.

The Amended Complaint alleged that, on various specified dates, the Respondents operated a solid waste management site with: (1) inadequate daily cover; (2) improper unloading, spreading and compacting of refuse; (3) insufficient equipment, personnel and supervision; (4) inadequate final cover; (5) unauthorized acceptance of sludges; (6) uncollected litter; and (7) inadequate measures to control leachate, in violation of Rules 301, 303(a), 303(b), 304, 305(a), 306, 310(b) and 314(e) of Chapter 7: Solid Waste Regulations ("Chapter 7") and Section 21(b) of the Illinois Environmental Protection Act ("Act"). (Stip. 3-6).

On July 2, 1979, Respondents Larry G. Henderson and John C. Henderson filed a Motion to Dismiss the Complaint against them. On July 5, 1979, the Agency requested an extension of time until July 20, 1979 to file a Response to the Respondent's Motion to Dismiss.

On July 12, 1979, the Board granted the Agency's motion. The Agency filed an Objection to the Motion to Dismiss on July 12, 1979. On July 26, 1979, the Board denied the motion of Respondents Larry G. Henderson and John C. Henderson that they be dismissed from this case. A hearing was held on November 5, 1979. The Agency, Randolph County Landfill & Salvage, Inc., Mr. John C. Henderson, and Mr. Larry G. Henderson entered into a stipulation and filed their Statement of Stipulated Settlement on November 13, 1979. Respondents S & L Sanitation, Inc. and Mr. Roger Rinne did not enter into the stipulation.

Randolph County Landfill and Salvage, Inc. ("Randolph") is a Delaware corporation which owns a 60 acre tract of land located about 1-1/2 miles southeast of Sparta, Randolph County, Illinois. (Stip. 2). It is stipulated that Randolph operated a solid waste management site ("site") on this tract of land until sometime shortly after the summer of 1977 when it leased the site to S & L Sanitation, Inc. ("S & L"), which then proceeded to operate the sanitary landfill on this property until 1978. (Stip. 3; R. 15-16; R. 47-48). Various compliance problems arose during the period when S & L operated the site. However, these problems were subsequently corrected after Randolph came back in, resumed control over the site, and took over actual operations. (Stip. 6).

Mr. Roger L. Rinne, Mr. John C. Henderson, and Mr. Larry G. Henderson are on the Board of Directors of S & L. Mr. Rinne owns 51% of the common stock of S & L; Mr. John Henderson owns 24-1/2% of the common stock of S & L; and Mr. Larry Henderson owns 24-1/2% of the common stock of S & L. (R. 15; R. 21; R. 23-24). S & L has no preferred stock or other classes of stock outstanding. John Henderson and Larry Henderson are brothers. Mr. Rinne is the President of S & L, John Henderson is the Vice-President, and Larry Henderson is the Secretary-Treasurer. Mr. Larry G. Henderson was a Director of S & L and an Officer of S & L (i.e., Secretary-Treasurer) at all times material to the Amended Complaint up until approximately July of 1978. (Stip. 2). S & L Sanitation, Inc., a Missouri corporation formed in 1975, is currently in bankruptcy. (See: Board Order of January 24, 1980 in PCB 79-76).

Mr. Clarence S. Henderson (the father of John and Larry Henderson) has been the Chairman of the Board of Directors of Randolph for the past 2 years and, prior to that, was the President of Randolph. (R. 46-47). Mrs. Clarence S. Henderson is currently President of Randolph. Mr. Claude Fraley, the brother-in-law of Clarence Henderson, has worked for Clarence Henderson since 1931 and his son, Mr. Marvin Fraley, is the main equipment operator at the landfill site. (R. 32; R. 50).

At the hearing, there was conflicting testimony. Mr. Roger L. Rinne testified that, as President of S & L, the majority of his time was spent in management of the routes and collection crews, and that he had very little participation in the day-to-day operations

of the landfill. (R. 59-60; R. 63-64). Mr. Rinne stated that he delegated his authority to John Henderson to control matters at the landfill, since the site was on the property owned by John Henderson's father and the Henderson family was around the landfill at all times and had first-hand knowledge of what was going on. (R. 17-18; R. 60). On the other hand, Mr. John C. Henderson, P.E., testified that his primary duty was to provide technical assistance when permits were needed for S & L (and not to manage the day-to-day corporate operations). (R. 28-29). Mr. Henderson stated that Mr. Rinne controlled the operation of this site with the assistance of Mr. Earl Bryant, the landfill manager. (R. 24-28).

In ascertaining the liability of S & L Sanitation, Inc. and Mr. Roger L. Rinne, the Board notes that S & L, as a closely-held corporation, appears to have been, in essence, a loosely-run family business with close ties, interlocking working relationships, and numerous informal interpersonal and reciprocal business arrangements with Randolph County Landfill and Salvage, Inc.

On cross-examination, Mr. Rinne admitted that he was personally involved with the landfill operations to the extent that he: (1) delegated the day-to-day operations to John Henderson; (2) sent in Mr. Earl Bryant when there were problems; (3) fired Marvin Fraley; (4) called the Agency to come out and make inspections to see if problems had been rectified; and (5) was personally present at the site on at least 4 occasions when the Agency inspected it in a period of a little over a year. (R. 64-65).

The testimony at the hearing indicated that whenever compliance problems developed and were brought to Mr. Rinne's attention, he acted in good faith to take whatever actions he felt necessary to attempt to correct the situation. However, these good faith efforts were apparently unsuccessful, and the compliance problems were only rectified after Randolph came back in and took over the landfill operations. It is stipulated that: (1) conditions at the site have greatly improved since Randolph has resumed control over the sanitary landfill, and (2) Randolph is currently operating the site in substantial compliance with the Board's Solid Waste Regulations and the Act. (Stip. 6).

The Board believes that the record conclusively demonstrates that Mr. Rinne, who owns 51% of the common stock of S & L and has legal control over the corporation, in his capacity as a Director and President of S & L had actual knowledge and notice of various violations of the Board's Solid Waste Regulations and the Act. Accordingly, the Board will impose a penalty of \$500.00 against Respondent Roger L. Rinne.

While S & L is clearly liable for its corporate acts, the firm is currently in bankruptcy. Because the imposition of punitive measures against this corporate entity would merely serve to reduce the funds ultimately available for distribution to creditors, the Board will assess no penalty against S & L Sanitation, Inc.

The proposed settlement agreement provides that the Respondents admit the allegations charged in the Amended Complaint and agree to pay various stipulated penalties. In evaluating the enforcement action and the proposed settlement agreement, the Board has taken into consideration all the facts and circumstances in light of the specific criteria delineated in Section 33(c) of the Illinois Environmental Protection Act. The Board finds the stipulated agreement acceptable under Procedural Rule 331 and Section 33(c) of the Act. The Board finds that all of the Respondents have violated Rules 301, 303(a), 303(b), 304, 305(a), 305(c), 306, 310(b) and 314(e) of Chapter 7: Solid Waste Regulations and Section 21(b) of the Act. The stipulated penalties of \$250.00 are assessed against Randolph County Landfill and Salvage, Inc. and Mr. John C. Henderson. A stipulated penalty of \$100.00 is assessed against Mr. Larry G. Henderson. A penalty of \$500.00 is imposed against Mr. Roger L. Rinne.

This Opinion constitutes the Board's findings of fact and conclusions of law in this matter.

ORDER

It is the Order of the Illinois Pollution Control Board that:

1. Respondents Randolph County Landfill & Salvage, Inc., S & L Sanitation, Inc., Roger L. Rinne, Larry G. Henderson, and John C. Henderson have violated Rules 301, 303(a), 303(b), 304, 305(a), 305(c), 306, 310(b), and 314(e) of Chapter 7: Solid Waste Regulations and Section 21(b) of the Act.

2. Respondent Randolph County Landfill & Salvage, Inc. shall pay a stipulated penalty of \$250.00 .

3. Respondent John C. Henderson shall pay a stipulated penalty of \$250.00 .

4. Respondent Larry G. Henderson shall pay a stipulated penalty of \$100.00 .

5. Respondent Roger L. Rinne shall pay a penalty of \$500.00 .


6. Within 45 days of the date of this Order, the Respondents shall, by certified check or money order payable to the State of Illinois, pay the previously indicated penalties, which are to be sent to:

Illinois Environmental Protection Agency
Fiscal Services Division
2200 Churchill Road
Springfield, Illinois 62706

7. Respondents Randolph County Landfill & Salvage, Inc., Larry G. Henderson, and John C. Henderson shall comply with all the terms and conditions of the Statement of Stipulated Settlement filed on November 13, 1979, which is incorporated by reference as if fully set forth herein.

Dr. Satchell concurs. Mrs. Anderson abstains.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order were adopted on the 6th day of March, 1980 by a vote of 4-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board