

ILLINOIS POLLUTION CONTROL BOARD  
October 10, 1985

ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB 84-76
	)	
ROCKFORD SPEEDWAY, INC., an	)	
Illinois corporation; and	)	
HUGH DEERY,	)	
	)	
Respondents.	)	

MR. JOSEPH J. ANNUNZIO, ASSISTANT ATTORNEY GENERAL, APPEARED ON BEHALF OF THE COMPLAINANT.

GILBERT, VEECHIE & NATALE (MR. LOUIS R. GILBERT, OF COUNSEL) APPEARED ON BEHALF OF THE RESPONDENTS.

OPINION AND ORDER OF THE BOARD (by W.J. Nega):

This matter comes before the Board on the June 14, 1984 Complaint brought by the Illinois Environmental Protection Agency (Agency). Count I of this three-count Complaint alleged that the Respondents caused or allowed the open dumping of garbage and other refuse into a ditch near the Rockford Speedway parking lot from July 2, 1974 until November 29, 1976 and into a nearby sand and gravel quarry from February 19, 1981 until June 14, 1984 in violation of Section 21(a) of the Illinois Environmental Protection Act (Act). Count II alleged that the Respondents caused or allowed the ditch to be used for the disposal of waste from July 2, 1974 until November 29, 1976 and allowed the quarry to be used for the disposal of waste from February 19, 1981 until June 14, 1984 without first obtaining the development or operating permits from the Agency in violation of Rules 201 and 202(a) of Chapter 7: Solid Waste Regulations (now 35 Ill. Adm. Code 807.201 and 35 Ill. Adm. Code 807.202) and Section 21(d) of the Act. Count III alleged that, from November 10, 1981 until June 14, 1984, the Respondents failed to place adequate daily cover on exposed refuse at the quarry disposal site and failed to provide fencing, gates or other measures sufficient to control access to the quarry disposal site in violation of Rules 301, 305(a), and 314(c) of Chapter 7: Solid Waste Regulations (now 35 Ill. Adm. Code 807.301, 35 Ill. Adm. Code 807.305, and 35 Ill. Adm. Code 807.314) and Sections 21(a) and 21(d) of the Act.

On June 13, 1985, the Agency filed a motion to dismiss the deceased Hugh Deery as a Respondent in this case. On June 27, 1985, the Board entered an Order dismissing Hugh Deery as a Respondent in this action.

The parties filed a Stipulation and Proposal for Settlement on June 27, 1985 and a hearing was held on August 27, 1985.

The Respondent Rockford Speedway, Inc., an Illinois corporation, exercises control over a parcel of real estate located in Loves Park, Winnebago County, Illinois off Route 173 which is commonly known as the Rockford Speedway. The former Respondent in this case, Mr. Hugh Deery, was the President of Rockford Speedway, Inc. and since February 1, 1980 was the beneficiary of Land Trust No. 3932. Mr. Deery, who died on July 14, 1984, was dismissed as a Respondent in this case on June 27, 1985. His surviving widow, Mrs. Josephine Deery, is currently the President of Rockford Speedway, Inc. and a beneficiary of Land Trust No. 3932. (Stip. 2). Since February 1, 1980, Rockford Speedway, Inc. has exercised control over a parcel of real estate immediately to the west of the Rockford Speedway on which a former sand or gravel pit (quarry) was located. (Stip. 3). This quarry property is also held in a trust by the First National Bank and Trust Company of Rockford, Illinois as Trustee and known as Land Trust No. 3932 (trust property). (Stip. 3-4).

The Respondent Rockford Speedway, Inc. has admitted that: (1) since February 19, 1981, it allowed the open dumping of waste and refuse (including broken asphalt, demolition debris, and, on occasion, some junk household appliances and household trash) at the eastern edge of the quarry in violation of Section 21(a) of the Act; (2) since February 19, 1981, it allowed the quarry to be utilized for waste disposal without first obtaining the necessary authorization via an Agency development or operating permit in violation of 35 Ill. Adm. Code 807.201, 35 Ill. Adm. Code 807.202 and Section 21(d) of the Act; and (3) since November 10, 1981, it failed to place the requisite daily cover on exposed refuse at the quarry disposal site and failed to provide fencing, gates, or other measures sufficient to control access to the site in violation of 35 Ill. Adm. Code 807.301, 35 Ill. Adm. Code 807.305, 35 Ill. Adm. Code 807.314 and Sections 21(a) and 21(d) of the Act. Accordingly, the proposed settlement agreement provides that the Respondent Rockford Speedway, Inc. admits the aforementioned violations and agrees to pay a stipulated penalty of \$1,000.00 (Stip. 3-4).

In mitigation, it is noted that the Rockford Speedway has, in the past, experienced a severe erosion problem with the parking lot which is located adjacent to the sand and gravel quarry and the Respondent has asserted that the dumping of fill at the adjacent edge of this quarry was partially done to help control erosion. (Stip. 5). Most of the refuse that was observed by Agency inspectors has been non-putrescible and

noncombustible, and the Respondent has contended that "some instances of dumping occurred without permission". (Stip. 5). On the other hand, it is stated that Agency personnel had previously informed the Respondents on several occasions that daily cover, restriction of access, and the Agency permits were required to use the site. Now that the management of the Rockford Speedway has changed hands, the Respondent is "planning to apply for a landfill permit from the Agency in order to protect the Rockford Speedway property from further erosion damage". (Stip. 5). The Agency has also indicated that "a considerable amount of cover had been placed on the site" before the filing of the proposed settlement agreement. (Stip. 5).

The proposed settlement agreement provides that the Respondent admits the violations alleged in the Complaint and agrees to: (1) cease and desist from further violations by not causing or allowing the dumping, deposit or disposal of refuse at the quarry site unless and until an Agency permit has first been obtained to develop and operate a solid waste management site; (2) erect sufficient fencing and gates to control access to the quarry dumping area adjacent to the Rockford Speedway parking lot within 90 days of the date of the Board's Order in this case; (3) expeditiously "grade the quarry dumping area adjacent to the Rockford Speedway parking lot to a 2:1 slope; place compacted soil cover material on the slope so as to form a compacted layer of not less than two feet with a top layer suitable to establish and support vegetative growth and seed the covered area with fescue or a similarly appropriate erosion control grass" unless a solid waste management site permit is obtained for the site from the Agency within 240 days of the date of the Board's Order in this case; and (3) pay a stipulated penalty of \$1,000.00 into the Environmental Protection Trust Fund within 90 days of the date of the Board's Order. (Stip. 5-7).

Additionally, Mrs. Josephine Deery, on behalf of the Land Trust No. 3932, has agreed "that permission is granted to Rockford Speedway, Inc. to enter on the Land Trust Property for the purpose of carrying out" the terms of the proposed settlement agreement and the Board's Order in PCB 84-76 effectuating said conditions. (Stip. 6).

In evaluating this enforcement action and 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 Act and finds the settlement agreement acceptable under 35 Ill. Adm. Code 103.180.

The Board finds that the Respondent, Rockford Speedway, Inc., has violated 35 Ill. Adm. Code 807.201, 807.202, 807.301, 807.305, and 807.314 and Sections 21(a) and 21(d) of the Act. The Respondent will be ordered to follow the agreed-upon compliance plan, cease and desist from further violations, and to pay a stipulated penalty of \$1,000.00 to the Environmental Protection Trust Fund.

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:

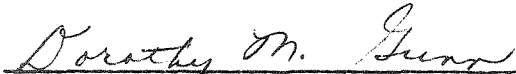
1. The Respondent, Rockford Speedway, Inc., has violated 35 Ill. Adm. Code 807.201, 807.202, 807.301, 807.305, and 807.314 and Sections 21(a) and 21(d) of the Illinois Environmental Protection Act.
2. The Respondent shall cease and desist from all further violations.
3. Within 90 days of the date of this Order, the Respondent shall, by certified check or money order payable to the State of Illinois and designated for deposit into the Environmental Protection Trust Fund, pay the stipulated penalty of \$1,000.00 which is to be sent to:

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

4. The Respondent shall comply with all the terms and conditions of the Stipulation and Proposal for Settlement filed on June 27, 1985, which is incorporated by reference as if fully set forth herein.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board hereby certify that the above Opinion and Order was adopted on the 10<sup>th</sup> day of October, 1985 by a vote of 7-0.

  
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Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board