

ILLINOIS POLLUTION CONTROL BOARD
May 18, 1984

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
v.) PCB 81-11
)
LAKE COUNTY GRADING COMPANY, a)
Delaware corporation, and LAKE)
COUNTY GRADING COMPANY OF)
LIBERTYVILLE, INC., an Illinois)
corporation,)
)
Respondents.)

H. ALFRED RYAN, ASSISTANT ATTORNEY GENERAL, APPEARED ON BEHALF OF THE COMPLAINANT.

DIVER, BOLLMAN, GRACH & QUADE (MR. THOMAS W. DIVER, 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 January 27, 1981 Complaint brought by the Illinois Environmental Protection Agency (Agency).

The Complaint alleged that the Lake County Grading Company (LCGC) improperly operated its sanitary landfill, causing water and air pollution, by accepting wastes not in compliance with its permit restrictions and by allowing leachate to be discharged into the Des Plaines River.

Additionally, LCGC allegedly did not properly: (1) spread and compact refuse; (2) maintain the slope of the working face; (3) provide sufficient equipment, personnel, and supervision; (4) place adequate daily, intermediate, and final cover on the site; (5) collect and dispose of litter; (6) monitor and control leachate, dust and vectors, and (7) supply the requisite water monitoring data to the Agency.

A hearing was held on September 28, 1982. The parties filed a Stipulation and Proposal for Settlement on October 6, 1982.

On November 12, 1982, the Board entered an Order which rejected the Stipulation and Proposal for Settlement because the proposed settlement agreement contained insufficient information pertaining to the financial condition of LCGC and the nature and extent of the environmental harm.

Subsequently, three additional hearings were held on March 1, 1983; June 1, 1983, and October 20, 1983. At the hearing of October 20, 1983, the Respondent requested that the Board accept the prior Stipulation, as supported by the documents that were additionally put into the record, as an updated and current proposed settlement agreement. The Complainant joined in that request. (R. 28-30).* Accordingly, the Board will grant the joint motion of the parties and consider the previous Stipulation, as updated by supplementary documentation, to be the proposed settlement agreement in question.

The Lake County Grading Company is a Delaware corporation which is authorized to do business in Illinois. The company conducted sanitary landfill operations on approximately 56.4 acres of land located on the southeast corner of Illinois Routes 63 and 120, adjacent to the Des Plaines River in Warren Township, Lake County, Illinois. (Stip. 2).

LCGC was originally established in 1934. In 1965, Mr. Donald Vanderspool (Vanderspool) and Mr. John Long (Long) obtained control of the firm. At that time, LCGC was a Subchapter S corporation. (R. 8-9). Vanderspool and Long owned the company until 1980, and then Mr. David Lundman (Lundman) acquired the tractors, trucks, and other business assets of LCGC. (R. 8). Lundman subsequently appointed Mr. Thomas Allen Rosenquist (Rosenquist), who had worked as a driver for Long and Vanderspool from 1972 until 1980, as company manager. (R. 11-12).

The previous business owners (Vanderspool and Long) left the business when they sold the assets in 1980, but stayed on for about two months during the transition period to teach Rosenquist how to bid on jobs and how to run the company as its manager. (R. 11-12). LCGC had about ten employees from 1972 until 1980 and there were about eighteen employees after Lundman, the new owner, took over in 1980. (R. 12).

On March 1, 1981, a successor corporation known as the Lake County Grading Company of Libertyville, Inc. (LCGC of Libertyville) was incorporated in Illinois by Mr. David Lundman (who owned 100%

*All references to the record (R.) will refer to the transcript of the October 20, 1983 hearing unless otherwise noted.

of the capital stock in the firm).** At the time of this incorporation, Rosenquist was neither an officer or director of LCGC of Libertyville, but he did conduct the day-to-day management chores to take care of company business. (R. 7). On May 10, 1981, Rosenquist bought all the shares of LCGC of Libertyville from Lundman. (R. 7; R. 23). Rosenquist is presently the sole shareholder and President of LCGC of Libertyville and shares the responsibility for management of daily operations with a manager whom he hired. (R. 14).

As indicated in Mr. Rosenquist's testimony, LCGC of Libertyville does not own the 56.4 acres of land on which landfill operations are conducted. (R. 24-25). The land is still owned by Vanderspool and Long. LCGC of Libertyville rents the site under a lease which continues to a date that is three years following the termination of landfill activities. Vanderspool and Long are merely the landowners who lease the land to Rosenquist's company and do not have any control over the operations of LCGC of Libertyville. (R. 24-28).

LCGC ordinarily handled "non-putrescible construction and demolition materials, brush, trees and other landscape wastes" at its landfill pursuant to Agency Operating Permit No. 1972-29. (Stip. 2). Additionally, LCGC had Supplemental Permit No. 75-156 from the Agency which authorized the acceptance of 200 cubic yards per week of cardboard and paper wastes (subject to the conditions that appropriate spreading, compacting, and daily cover, as well as adequate control of litter by portable litter fences, be maintained). (Stip. 2). However, it is stipulated that LCGC improperly accepted large amounts of wallboard containing gypsum, in violation of its Agency permit, for a number of years. When the gypsum in that wallboard came into contact with rainwater and groundwater, leachate generated by this wallboard

**Since LCGC of Libertyville is the successor corporation to LCGC, the Board has, on its own motion, added LCGC of Libertyville as a party respondent in this proceeding. Pursuant to the request of the parties to amend the originally filed Stipulation to substitute LCGC of Libertyville for LCGC as the real party in interest (R. 29-30), the Board will dismiss LCGC as a party in this action. While it is unclear from the record whether the old corporation (LCGC) was ever officially dissolved (R. 13-14) or is merely inoperative, it is clear that all concerned persons, as well as the actual parties involved, have received notice of the proceedings in PCB 81-11. Mr. Rosenquist testified that Mr. Vanderspool and Mr. Long are aware of this proceeding. (R. 27). Moreover, Mr. Long and Mr. Vanderspool have received notice of all hearings and are represented by attorney William Clark, who is of record in the proceedings. (R. 4; R. 27-28). LCGC of Libertyville has signed the Stipulation and has already taken various measures to bring the landfill operations into compliance with the applicable regulations. (R. 14-19).

contained sulfides and emitted odors which were present in periodic discharges of this leachate into the Des Plaines River. (Stip. 2).

The parties have stipulated that Agency inspections revealed that LCGC (1) accepted and disposed of drums or other containers containing residues of chemicals at the site on specified dates between November 18, 1980 and April 22, 1982 in violation of its permit, Rule 302 of Chapter 7: Solid Waste Regulations ("Chapter 7"), and Section 21(e) of the Illinois Environmental Protection Act ("Act"); (2) failed to provide adequate measures to monitor and control leachate on five occasions between August 5, 1980 and January 22, 1981 in violation of Rule 314(e) of Chapter 7 and Section 21(e) of the Act; (3) allowed the discharge of contaminated leachate into the environment so as to cause water pollution on eight dates between March 21, 1979 and June 25, 1980 in violation of Rule 313 of Chapter 7 and Section 21(e) of the Act; (4) operated its site so as to cause the emission of unreasonable and objectionable odors, causing air pollution, on numerous dates between November 15, 1977 and January 7, 1981 in violation of Rule 312 of Chapter 7 and Sections 9(a) and 21(e) of the Act; (5) failed to properly control litter or utilize portable litter fences on thirteen separate occasions between June 16, 1976 and April 22, 1982 in violation of its permit, Rule 302 of Chapter 7, and Section 21(e) of the Act; and (6) failed to place adequate daily cover over refuse on numerous dates between March 9, 1976 and April 22, 1982 in violation of Rule 305(a) of Chapter 7 and Section 21(e) of the Act. (Stip. 2-8).

Additionally, it is stipulated that LCGC: (1) failed to place the requisite intermediate cover on refuse on various dates between January 13, 1977 and March 30, 1982 in violation of Rule 305(b) of Chapter 7 and Section 21(e) of the Act; (2) failed to properly spread and compact refuse on seven specified dates between March 9, 1976 and June 19, 1981 in violation of Rule 303(b) of Chapter 7 and Section 21(e) of the Act; (3) failed to place proper final cover on January 11, 1970, February 8, 1978, and September 18, 1981, in violation of Rule 305(c) of Chapter 7 and Section 21(e) of the Act; (4) improperly maintained the slope of the working face on June 16, 1976 and September 18, 1980 in violation of Rule 303(c) of Chapter 7 and Section 21(e) of the Act; (5) failed to properly control dust on July 15, 1976 in violation of Rule 314(f) of Chapter 7 and Section 21(a) of the Act; (6) failed to provide sufficient equipment, personnel and supervision at the site on eight separate occasions between June 16, 1976 and September 18, 1981 in violation of Rule 304 of Chapter 7 and Section 21(e) of the Act; and (7) received at its site for disposal on April 22, 1982 more than 200 cubic yards of paper and cardboard in violation of its permit, Rule 302 of Chapter 7, and Section 21(e) of the Act. (Stip. 2-8).

The proposed settlement agreement provides that the LCGC admits various violations alleged in the Complaint and agrees to:

(1) cease and desist from further violations; (2) provide sufficient personnel at the site; (3) promptly obtain and utilize the necessary portable litter fences; (4) expeditiously remedy an existing cover erosion; (5) not accept any drums containing any wastes, residues, etc. without first obtaining a supplemental permit from the Agency; (6) conduct specified water monitoring and sampling operations; and (7) pay a stipulated penalty of \$5,150. (Stip. 8-10).

Although the admitted violations all occurred before LCGC of Libertyville was incorporated on March 1, 1981 and before Rosenquist's acquisition of the business on May 10, 1981, the successor corporation has agreed to take all necessary measures to bring the site into compliance. (R. 14-19; R. 22-28). Portable litter fences have already been installed; substantial work has been done to remedy cover erosion, and drums containing improper residues are no longer accepted at the site. (R. 14-17; R. 18-19; see: Respondent's Exhibit #1).

In reference to the additional information mandated by the Board's November 12, 1982 Order, the parties have indicated that: (1) LCGC of Libertyville is financially capable of paying the stipulated penalty of \$5,150 without impairing its financial security (R. 10-11); (2) no citizen complaints about annoying, objectionable odors have been received by the Agency since 1979 because sulfide bearing gypsum wallboard wastes are no longer being deposited at the site (R. 28); (3) only authorized chemicals for which supplemental permits and manifests were obtained were disposed of at the site (R. 21), and (4) the discharge of contaminated leachate into the Des Plaines River is not presently occurring. (R. 21; see: Agency Group Exhibit A).

In evaluating this enforcement action and proposed settlement agreement, as amended, 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 amended settlement agreement acceptable under 35 Ill. Adm. Code 103.180.

The Board will dismiss LCGC as a party in this action and substitute the successor corporation, Lake County Grading Company of Libertyville, Inc., for the original Respondent. Accordingly, the Board finds that the present Respondent, Lake County Grading Company of Libertyville, Inc., has violated Rules 302, 303(b), 303(c), 304, 305(a), 305(b), 305(c), 306, 312, 313, 314(e), and 314(f) of Chapter 7 and Sections 9(a), 21(a), and 21(e) of the Act. The Respondent will be ordered to cease and desist from further violations; to follow the specified compliance plan set forth in the Stipulation as amended, and to pay the stipulated penalty of \$5,150.

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

ORDER

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

1. Lake County Grading Company is hereby dismissed as the party-respondent in this action and the successor corporation, Lake County Grading Company of Libertyville, Inc., is hereby substituted as the Respondent in this case.

2. The Respondent, Lake County Grading Company of Libertyville, Inc., has violated Rules 302, 303(b), 303(c), 304, 305(a), 305(b), 305(c), 306, 312, 313, 314(e), and 314(f) of Chapter 7 and Sections 9(a), 21(a), and 21(e) of the Illinois Environmental Protection Act.

3. The Respondent shall cease and desist from further violations.

4. Within 45 days of the date of this Order, the Respondent shall, by certified check or money order payable to the State of Illinois, pay the stipulated penalty of \$5,150 which is to be sent to:

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

5. The Board hereby grants the joint motion of the parties to accept the Stipulation and Proposal for Settlement filed on October 6, 1982, as supported by the supplementary documents that have been additionally placed in the record, as an amended, updated, and current proposed settlement agreement.

6. The Respondent shall comply with all the terms and conditions of the Stipulation and Proposal for Settlement filed on October 6, 1982, as amended, which is incorporated by reference as if fully set forth herein.

7. Within 45 days of the date of this Order, Lake County Grading Company of Libertyville, Inc. shall execute a Certification of Acceptance and Agreement to be bound to all terms and conditions of this Order. Said Certification shall be submitted to the Illinois Environmental Protection Agency at 2200 Churchill Road, Springfield, Illinois 62706. The 45-day period shall be held in abeyance during any period that this matter is being appealed. The form of said Certification shall be as follows:

CERTIFICATION

I, (We), _____, having read the Order of the Illinois Pollution Control Board in PCB 81-11 dated May 3, 1984, understand and accept the said Order, realizing that such acceptance renders all terms and conditions thereto binding and enforceable.

Lake County Grading Company of Libertyville, Inc.

By: Authorized Agent


Title

Date

IT IS SO ORDERED.

Chairman Dumelle dissented.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 18th day of May, 1984 by a vote of 5-1.



Christan L. Moffett Clerk
Illinois Pollution Control Board