

ILLINOIS POLLUTION CONTROL BOARD
October 12, 1984

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
v.) PCB 80-125
)
A. J. WELIN,)
)
Respondent.)

MR. GERHARDT BRAECKEL, ASSISTANT ATTORNEY GENERAL, APPEARED ON BEHALF OF THE COMPLAINANT.

PEDDERSON, MENZIMER, CONDE, STONER & KILLOREN (MR. CLIFFORD E. STONER, OF COUNSEL) APPEARED ON BEHALF OF THE RESPONDENT.

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

The original Complaint in this case was filed on July 1, 1980 by the Illinois Environmental Protection Agency (Agency) and alleged that Respondent Allen J. Welin (Welin): (1) allowed open dumping; (2) failed to obtain the requisite waste site development and operating permits, and (3) failed to provide final cover on a triangular-shaped, 2.83 acre, vacant lot (the "site") owned by him and located across the street from his home north of the City of Belvidere on Poplar Grove Road in Boone County, Illinois in violation of Rules 201, 202(a), 301, and 305(c) of Chapter 7: Solid Waste Regulations and Section 21(a) of the Illinois Environmental Protection Act (Act).

On March 13, 1981, the Agency filed a Motion for Leave to File an Amended Complaint and an Amended Complaint to join the National Division of the Moline Corporation as a party-respondent. On April 27, 1981, the Hearing Officer denied the Agency's motion to amend the Complaint. On May 14, 1981, the Board upheld the Hearing Officer's ruling on the Agency's motion to amend. On May 28, 1981, the Agency filed a Motion for Consolidation of this case with PCB 81-88, IEPA v. National Division of Moline Corporation which the Board denied on June 10, 1981.

Hearings were held on October 9, 1981, October 29, 1981, and November 10, 1981.

On May 13, 1982, the Board adopted an Opinion and Order which made findings of violation; ordered the Respondent to cease and desist from further violations; and ordered Welin to place

final cover on the site and to take all steps necessary to adequately police the site to prevent open dumping. (See: IEPA v. A. J. Welin, PCB 80-125, 47 PCB 07, Opinion and Order of May 13, 1982 and IEPA v. A. J. Welin, PCB 80-125, 47 PCB 15, Dissenting Opinion by J. D. Dumelle and N. E. Werner dated May 13, 1982 and filed September 1, 1982).

On June 18, 1982, the Respondent filed a Motion to Vacate, for Rehearing, or Modification of Final Order and Other Relief. The Agency filed its response to this motion on August 16, 1982.

On August 18, 1982, the Board entered an Order which granted rehearing and reopened the record on the issue of alternative relief in lieu of two feet of cover over the entire site. In its August 18, 1982 Order, the Board noted that:

"The merits of the decision are not at issue; the Board's findings of violation contained in the May 13, 1982 Opinion and Order remain unchanged. The rehearing shall be confined to a demonstration that an alternative to the two feet of cover required by the Board's rules and regulations is sufficient to correct the environmental harm posed by this site. The record is reopened and rehearing on this issue is hereby granted." (See: IEPA v. A. J. Welin, PCB 80-125, 47 PCB 525, Order of August 18, 1982).

In reference to the requirement that the Respondent place two feet of additional cover costing up to \$60,000 on a vacant lot with an assessed valuation between \$2,000 and \$3,000 and a market value of approximately \$10,000 to \$12,000, the Dissenting Opinion in IEPA v. A. J. Welin, PCB 80-125, 47 PCB 15, May 13, 1982 stated that:

"... the existing material has already revegetated and is thus an adequate cover. The new cover required by the majority would be quite expensive and is thus unnecessary ... The exhibits, especially Exhibits 15D and 15E, show luxurious growths of grass and a 'hayfield' appearance. These grasses and vegetation prove that the foundry sand is not toxic ... The majority has required two feet of additional cover costing up to \$60,000. That new cover, if placed, would be for the purpose of raising vegetation upon it. Vegetation now grows in a luxurious manner (Exhibits 15D and 15E). The additional cover is simply not needed and much too costly."

On July 12, 1984, a hearing on the issue of an alternative to the two feet of final cover was held and the parties submitted a Stipulation and Proposal for Settlement (Stip.) in this matter. (R. 3-4).

This settlement proposal indicated that: (1) On May 31, 1983, the Respondent paid the \$500 penalty imposed by the Board, and (2) Agency inspections during August, 1983 and December, 1983 revealed that "... most of the filled area was covered with thick vegetation about two feet high ... there were a few small barren patches, some of which appeared to be clay covered ... on most of the filled area there appeared to be at least some thin soil cover ... dozens of cottonwood seedlings were becoming established." (Stip. 2-3).

Accordingly, the Agency concluded that appropriate seeding and the addition of a few inches of soil to the top of the filled area (and the addition of one foot of soil on the slopes of the filled area which face the river) should produce vegetation with good root structures for the retardation of runoff and the prevention of erosion. (Stip. 3). Additionally, the Agency believes that "access to the site can easily be restricted and the site posted" with permanent signs to deter dumping. (Stip. 3).

The proposed settlement agreement provides that the Respondent Welin and the Respondent in the interrelated case of IEPA v. National Division of Moline Corporation, PCB 81-88, jointly and severally shall: (1) place one foot of soil cover on the two slopes of the elevated filled-in area of the site which face the river, and (2) seed the top and slopes of the site with fescue* or a similarly appropriate seed. (See: Opinion and Order of October 12, 1984 in IEPA v. National Division of Moline Corporation, PCB 81-88). Additionally, as part of the remedial program for the site, Respondent Welin shall place two inches of soil cover on top of the entire filled-in area of the site. All such remedial measures shall be accomplished and completed within six months of the date of the Board Order in this case. (Stip. 3-4).

After evaluating all the facts and circumstances of this case, the Board finds the proposed settlement agreement acceptable under 35 Ill. Adm. Code 103.180 and will order Respondent Welin to follow the agreed-upon compliance program.

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

* Fescue is a tufted perennial grass (genus Festuca) with paniced spikelets.

ORDER

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

1. Within 6 months of the date of this Order, Respondent A. J. Welin and the Respondent in the case of IEPA v. National Division of Moline Corporation, PCB 81-88, jointly and severally shall:

- (a) Place one foot of soil cover on the two slopes of the elevated filled-in area of the site which face the river, and
- (b) Seed the top and slopes of the site with fescue or a similarly appropriate seed.

2. Within 6 months of the date of this Order, Respondent A. J. Welin shall place two inches of soil cover on top of the entire filled-in area of the site.


3. The May 13, 1982 Board Order in IEPA v. A. J. Welin, PCB 80-125, 47 PCB 07 is hereby modified to the extent that the alternate compliance plan specified in items #1 and #2 of the Order herein is substituted for the original compliance plan.

4. The Respondent shall comply with all the terms and conditions of the Stipulation and Proposal for Settlement filed on July 12, 1984, which is incorporated by reference as if fully set forth herein.

IT IS SO ORDERED.

Board Member J. Theodore Meyer dissented.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 12th day of October, 1984 by a vote of 5-1.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board