

ILLINOIS POLLUTION CONTROL BOARD

January 20, 1977

ENVIRONMENTAL PROTECTION AGENCY,)
)
 Complainant,)
)
 v.) PCB 76-126
)
 FRANK KETTMAN and)
)
 CITY OF SPRING VALLEY,)
)
 Respondents.)

Mr. Donald Means, Attorney, appeared for the Complainant;
Mr. William J. Wimbiscus, Jr., City Attorney, appeared for Respondent,
City of Spring Valley;
Mr. Frank L. Kettman, Respondent, appeared pro se.

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

This matter is before the Board on a Complaint filed by the Environmental Protection Agency (Agency), charging in a single count that Respondents Frank L. Kettman (Kettman) and the City of Spring Valley (City) failed to place a compacted layer of final cover, not less than two feet in depth, over the surface of a previously operated solid waste management site in Putnam County, Illinois, in violation of § 21(b) of the Environmental Protection Act (Act) and Rule 305(c) of Chapter 7: Solid Waste, which requires that final cover be in place within 60 days following the final placement of refuse. A hearing was held on August 25, 1976, in Hennepin, Illinois, at which the parties indicated an intent to file a Stipulation and Proposal for Settlement resolving this Enforcement case. A Stipulation and Proposal for Settlement (Stipulation) was in fact filed by the parties on October 29, 1976, and forms the basis for this Opinion and Order.

The site in question was operated by the City from approximately 1960 until about June 1, 1974, as a solid waste disposal site. Because of difficulties in complying with the requirements of Chapter 7, the City at that time decided to sell the property (R., 5). The City elected to leave the application of final cover to the buyer of the site, (Stip., ¶2). The site was sold by the City to Respondent Kettman on August 26, 1975, at which time the site was not in compliance with Rule 305(c) of Chapter 7. Inasmuch as refuse disposal activities had ceased on the site by June 1, 1974, final cover should have been in place by approximately July 31, 1974.

The parties stipulate that final cover was not in fact completed on the site until approximately June 22, 1976, (Stip., ¶13). Exhibits supporting that conclusion, (Stip., ¶14), comprised primarily of Agency inspection reports, indicate that this was the fact. This Stipulation carries the Agency's burden of proof under § 31(c) of the Act, and we have no difficulty concluding that Respondents did in fact violate § 21(b) of the Act and Rule 305(c) of Chapter 7. The parties did not, however, stipulate as to the issue of whether a penalty should be imposed in this matter, or the amount of any such penalty, which requires further discussion of matters in aggravation or mitigation of the stipulated offense.

It is apparent from the Stipulation that the site in question is not suitable for use as a solid waste management site. It is located in the path of natural drainage through high, sandy bluffs along the south side of the Illinois River, (Stip., ¶3). The parties agree that this increases the danger of leachate generation and contamination of an on-site stream tributary to the Illinois River, and increases the possibility of refuse being washed out of the fill and carried downstream. The parties stipulate that there is a history of complaints to the Agency concerning water-borne garbage and downstream well contamination, (id.). The City should have realized the necessity of final cover at least as early as July 18, 1974: An exhibit to the Stipulation, a letter of that date from the Agency to the Mayor and Counsel of Spring Valley, fully set forth the need for cover on the site. The photographic exhibits accompanying the Stipulation indicate continuing problems as the result of the failure to apply final cover from that time until such cover was actually applied.

By way of mitigation, the Stipulation shows that shortly after Respondent Kettman purchased this site from the City on August 26, 1975, he sent a letter to the Agency stating an intent to complete final cover as soon as possible. Kettman then signed a written agreement with the Agency, dated November 12, 1975, agreeing to properly apply and grade all final cover by December 31, 1975.

However, because of wet weather followed by frozen ground, as well as serious equipment breakdowns, final cover was only approximately 75 percent complete by December 31, 1975. Subsequent to an April 8, 1976 Agency investigation, further work was conducted on final cover. However, further equipment breakdowns again delayed completion.

Following the filing of the Complaint in this matter on May 4, 1976, a further Agency investigation on May 19, 1976 indicated that although further progress had been made, "some work remained, particularly around the edges of the fill." (Stip., ¶10.) An Agency investigation on June 22, 1976, finally disclosed "that a compacted layer of at least two feet of final cover had been applied over all portions of the site and had been properly graded and seeded to prevent erosion, and that the site was in general compliance." (Stip., ¶11.)

Regardless of which Respondent bears responsibility for final cover on this site, a delay of very nearly two years cannot be excused. For that reason, the Board finds that a penalty is necessary in this case to encourage prompt compliance with the final cover requirements of our Rules, enacted pursuant to the requirements of the Act. We shall impose a civil penalty of \$250.00. It is sufficient for our purposes - to encourage these and other owners or operators to timely comply with the Act and our Regulations, and to emphasize the importance of the final cover requirement to prevent land and water pollution - that these Respondents both bear liability for the necessary penalty.

Although Respondents failed to carry their burden with respect to § 33(c) of the Act, our finding that a penalty is necessary is reinforced by examination of the factors set forth there. Processing and Books v. PCB, 64 Ill. 2d 68, 351 N.E.2d 865 (1976). First, it is plain from the exhibits to the Stipulation that the site in question constituted a serious pollution hazard before final cover was applied. Second, inasmuch as the site was no longer being used for refuse disposal, it apparently had little social or economic value; what little value it may have had was diminished almost entirely by the unusable state in which it was allowed to remain. Third, the site is, as noted above, unsuitable for the use to which it was put. Its priority in location is not an issue in this matter. Finally, the fact that the site has now been covered demonstrates, in addition to mitigating the offense by eliminating it, that it was technically and economically feasible to apply cover at the appropriate time.

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

ORDER

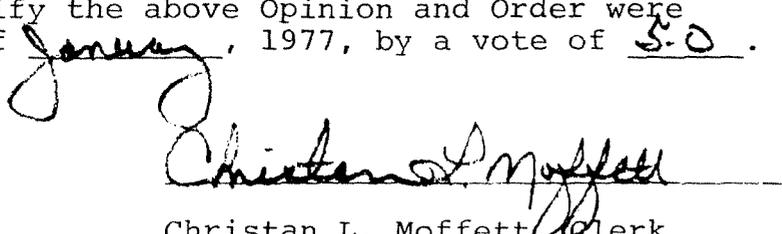
IT IS THE ORDER OF THE POLLUTION CONTROL BOARD that:

1. Respondents Frank Kettman and the City of Spring Valley are found to have failed to apply necessary final cover to a solid waste management site in Putnam County, Illinois, in violation of Section 21(b) of the Environmental Protection Act and Rule 305(c) of Chapter 7: Solid Waste, of this Board's Rules and Regulations.

2. Respondents shall pay as a penalty for said violations the sum of Two Hundred Fifty Dollars (\$250), payment to be made within thirty (30) days of the date of this Order to:

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

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 20th day of January, 1977, by a vote of 5-0.


Christan L. Moffett, Clerk
Illinois Pollution Control Board