

ILLINOIS POLLUTION CONTROL BOARD
December 4, 1980

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,)
)
 Complainant,)
)
 v.) PCB 78-158
)
 STREATOR DISPOSAL SERVICE, INC.,)
)
 Respondent.)

PATRICK J. CHELSEY, MARY DRAKE, AND CHRISTINE G. ZEMAN, ASSISTANT ATTORNEYS GENERAL, APPEARED ON BEHALF OF COMPLAINANT.

JOHN R. FIELDING, WALSH AND FIELDING, APPEARED ON BEHALF OF RESPONDENT.

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

This matter comes before the Board on the nine-count Complaint of the Illinois Environmental Protection Agency (Agency), filed June 5, 1978, as amended December 31, 1979. The Respondent, Streator Disposal Service, Inc. (Streator Disposal) was charged with multiple and continuing violations of the Environmental Protection Act (Act) and of Chapter 7: Solid Waste (Chapter 7), in connection with operation of its sanitary landfill. Citizen testimony, as well as that of party witness, was received at the four hearings held concerning this matter.*

Streator Disposal, a wholly owned subsidiary of Theta Systems, operates a garbage disposal service and a sanitary landfill (R. 425 B, 406B). The landfill is and has been located since at least 1972 in the north section of Livingston County, approximately one half mile outside the limits of the City of Streator, LaSalle County, Illinois. The approximately 20 acre site is within 150 feet of the Vermilion River. The landfill accepts wastes from Streator Disposal, the City of Streator, and "just about everything in Streator" (R. 406-407B, 88, 148).

The Agency's Amended Complaint charges Streator Disposal with the following offenses against the Act and Chapter 7:

Count I. No operating permit, since July 24, 1974. Violation of §21(e) and Rule 202(b)(1).

*Transcripts of the hearings held on May 27, 1980 and June 24, 1980 are both numbered as beginning at pages 385. The May 27 transcript pages will be referenced as R. 385A et seq., and the June 24 pages as R385B et seq.

Count II. Deposit of refuse at top of fill or trench, since February 2, 1974 (14 specific dates alleged). Violation of §21(b) and Rules 303(a) and 301.

Count III. Improper spreading and compacting of refuse, since January 8, 1974 (17 dates). Violation of §21(b) and Rules 303(a) and 301.

Count IV. Inadequate daily cover (6 inches), intermittently since August 30, 1973 (36 dates). Violation of §21(b) and Rules 305(a) and 301.

Count V. Inadequate intermediate cover (12 inches where no new deposits within 60 days), since August 30, 1973 (26 dates). Violation of §21(b) and Rules 305(b) and 301.

Count VI. Inadequate final cover (2 feet 60 days after final deposit), since August, 1973 (19 dates). Violation of §21(b) and Rules 305(c) and 301.

Count VII. Open burning, intermittently since July 11, 1974 (2 dates). Violation of §9(c), Rules 311 and 301, and Rule 502 of Chapter 2: Air Pollution.

Count VIII. Inadequate employee facilities, inadequate dust vector control (e.g. insects and rodents), intermittently since May 21, 1976 (2 dates). Violation of §21(a) and Rules 314(a), (f) and 301.

Count IX. Inadequate litter control, since July 27, 1973 (11 dates). Violation of §21(a) and Rule 306.

Two of these violations were specifically admitted. Arthur Allen, Branch Manager of Streator Disposal since 1976 and an employee since 1972, admitted that open burning occurred at the site on four unspecified occasions (Count VII) (R. 58). The major admission, made even prior to hearing, was that Streator Disposal had never obtained an operating permit (Count I) (e.g. Comp. Ex. 1). However, as this permit issue is tied to the operational deficiencies, some discussion of the permitting process is pertinent.

In order to obtain an operating permit, a landfill owner must first apply for and receive a developmental permit, which may specify, for example, the number and location of berms necessary for proper maintenance of the site. The site must then be brought into compliance with the conditions of the developmental permit, and if already operational, into total compliance with the Board's solid waste regulations. When the applicant feels that the site is properly developed and is properly operating, a written request for a permit is made to the Agency. The Agency advises the applicant that a pre-operational inspection will be made to determine whether developmental and operational compliance has been achieved. A landfill which passes this inspection is issued a permit. If

deficiencies are noted, the applicant may, of course, make any necessary corrections and arrange for another pre-operational inspection, or appeal the permit denial (R. 490-492A).

The record is silent as to when Streator Disposal received a developmental permit. While there is an indication that it may have applied for an operating permit in 1976 and 1977, but not before, it was definitely established that application was made in July of 1978, after the filing of this action (R. 416-417B). The permit was denied following Agency inspection because of developmental permit non-compliance involving berm construction, and failure to seal a field drain tile which was discharging leachate into the Vermilion River. This permit denial was not appealed. Streator Disposal had made no further application for a permit as of June 24, 1980, the date of the last hearing (R. 493-494A, 413B, Comp. Ex. 26).

Correspondence spanning the years 1974 to 1980 between Streator Disposal and the Agency was introduced as Complainant's Exhibit 2. The Board notes that Streator Disposal had received specific, individual notice of the permit requirement at least as early as 1974. This correspondence also indicates that since 1974 Streator Disposal had repeatedly received notice of operational violations, and in early 1976 had even executed a compliance agreement regarding these violations. However, a further compliance conference was held in March, 1977 following Agency issuance of an enforcement notice detailing specific 1976 violations. Correspondence between 1977 and 1980 shows that the Agency had continued to notify Streator Disposal of operational violations.

Proof of operational violations in this action was made through the testimony of four Agency inspectors who had observed and photographed conditions at the landfill on 24 specific dates between and through May 2, 1978 and May 5, 1980. As Complainant's Group Exhibit 2 was offered and received into evidence solely for the purpose of providing notice of violation, and not to prove the truth of the information contained therein (R. 51-52), the Board must dismiss Counts II through VI, VIII and IX insofar as they relate to allegations of violations occurring before May 2, 1978. Since the amended Complaint alleges violations only through its filing date, December 13, 1979, the Board can consider evidence beyond that date only as evidence of aggravating or mitigating factors. Evidence concerning the violations alleged in Counts II through IX (excluding admitted VII) was presented as follows:

Count II. Three inspectors actually observed Streator's employees depositing refuse at the top, rather than the toe of the fill on various dates between May 2, 1978 and March 11, 1980 (R. 74, 76, 231, 235, 244, 251, 319-320, 353). Photographic evidence was also introduced (see Comp. Ex. 9A, 12C, 12D, 15A, 18M).

Count III. Again, three inspectors observed and introduced photographs concerning failure to properly spread and compact

refuse. This evidence relates to specific dates between May 2, 1978 through September 17, 1979 (R. 73, 76, 191, 231, 238, 242-243, 250, Comp. Ex. 7A, 10, 11A, B, D, F, G, I, J, K, 12A).

Count IV, V, VI. The Agency's photographic exhibits were particularly effective tools for the demonstration of violations. Violations of the daily cover requirements were noted concerning each inspection date, and photographs taken on "back to back" inspections made at the end of one operating day and at the beginning of the following day so illustrate, (e.g. Comp. Ex. 4-5). Violations of several months duration were also proven in this matter. For instance, a pile of uncovered and uncompacted refuse, including an old wooden fence and a blue-green metal object, was photographed on October 17, 1979 (Comp. Ex. 13C). This same refuse pile appeared in photographs taken in January, April, and May of 1980 (Comp. Ex. 17R, 24S, and 25K). Further testimony and photographs of intermediate cover violations from May, 1978 through May, 1980 was introduced (e.g. R.73, 233 and Comp. Ex. 9B, 356 and Comp. Ex. 24E-F, 371). No clear evidence was introduced concerning failure to finally cover an area identified as a final lift. However, Mr. Allen's testimony concerning 1978 and 1980 efforts to put "some final cover" in place before the pre-operation (permit application) inspection is an admission of such violation (R. 411-412B). Citizen witness' testimony was also introduced in support of the alleged cover violations (R. 24, 28, 31).

Count VII-IX. Alice Jaegle and Barbara Kidder, the citizen witnesses, presented the most graphic testimony on the respective vector control and litter control allegations. Alice Jaegle has lived approximately two blocks from the landfill for the past 26 years and Barbara Kidder has lived across the road from it for the past 7 or 8 years (R. 26, 28). Both testified that serious problems with flies, rats and other rodents, and windblown litter began after the beginning of the landfill's operation (R. 22-26, 39, 42). Agency inspectors observed excessive numbers of flies on two occasions in 1979 (R. 22, 25, 443A), as well as windblown litter on most inspection dates, including "back to back" ones (e.g. Comp. Ex. 14H, 15A, D, F, G, H, 17R, 24E-H). No clear evidence was presented concerning the lack of employee facilities portion of Count VII.

Respondent did not deny any of the allegations of the Complaint at the hearings. It was, however, offered that some of the refuse depositing and cover violations were attributable to wet weather conditions which made operation of equipment more difficult, and that some equipment breakdowns occurred (e.g. 420). The primary thrust of Respondent's cross-questioning at hearing and of its final argument were that the Agency's inspectors received little formal training, that no specific, written guidelines exist for some items on the Agency inspection report, and that the Agency's "standards...are so inconsistent and contradictory that literal compliance is an impossibility" (Resp. Brief 6-7). Finally, much of the hearing "testimony" of Respondent's counsel relates to the propriety of the 1978 permit denial, and whether the presence of

leachate within a site--not a matter formally at issue here, although it is a sign of poor operation--can be determined without a chemical analysis.

The Board is aware that wet weather can cause operational difficulties. The Board finds no merit in Respondent's other contentions. Gerald Steele, an Agency inspector who has performed approximately 500 inspections, testified at some length concerning the meaning, interpretation, and completion of the Agency's inspection reports (generally, 390-419A, 425-426A). While an inspector has discretion in some inspectional areas, Mr. Steele's testimony indicates that it is an informed, limited discretion. Although the other testifying inspectors were less experienced than Mr. Steele, Respondent's own witness, site manager Allen, testified that inspections were made in a "fairly consistent" manner (R. 410-411B). The permit denial arguments should have been made in an appeal, as the Agency noted, and were irrelevant to this action.

Considering all of the evidence presented, the Board finds that Streator Disposal has operated without a permit since July 24, 1974 (Count I) and has caused open burning as alleged in Count VII of the Complaint. The Board further finds that, intermittently from May 2, 1978 to December 31, 1979, Respondent has committed the violations alleged in Counts II, III, IV, V, VII, VIII, and IX. The Count VII Rule 314(a) allegation is dismissed.

The Agency has suggested that the landfill be shut down until it is brought into compliance and a penalty of \$10,000 be imposed. Respondent made no alternative recommendations as to penalty amount, stating that should the Board fail to dismiss the complaint, imposition of a fine would divert funds better spent in upgrading its operation.

In addition to reviewing Respondent's actions, the Board must review the totality of the circumstances of a pollution source as required by Section 33(c) of the Act. Mayor Theodore Bakalar testified that the closing of the site would impose economic hardship on the City of Streator. Streator Disposal is located one half mile from Streator. The closest neighboring landfills are located in Peru, 26 miles northwest; Pontiac, 30 miles southeast; and Ottawa, 16 miles and 23.5 miles. The City pays an annual disposal fee to Streator of \$24,000. The Mayor estimates that use of the Peru disposal site would add \$185,000 annually to the City's disposal costs. This figure is exactly half of the current budget of the City's Sanitation Department. He also stated that Streator is federally categorized as a distressed city, and has an unemployment rate of 15%. Thus, these additional out of pocket costs are ill afforded, and lack of an in-town disposal site is perceived to be a disincentive to existing and potential industry (R. 539-541A, 552-554A).

However, Mayor Bakalar also testified that if the Board should find the site in violation of its rules, that he believed that Respondent should be ordered to bring it into compliance.

While the Mayor believed that immediate closure of the site would create "economic chaos" in the City, he agreed that a new site will shortly be necessary in any event, since the site is nearly filled, and that he believed adequate sites for landfill development existed in the area (R. 559, 561-563A).

The Board acknowledges that the site was judged to be considerably improved as of June 18, 1980, when the operational violations were confined to daily cover (R. 399-400B, Resp. Ex. 9-15). Proof regarding expenditures for hauling and applying cover (\$30,000 in 1978, \$15,000 plus in 1980) and for equipment (\$50,000 in 1980) (R. 411-412, 432-433B) is hardly mitigatory, as such expenses are ordinary expenses of operation of a landfill. Indeed, this proof tends to show how Respondent has financially benefitted from its violations.

Although mitigatory evidence is scant, this well documented record, which includes numerous color photographs, is replete with evidence of Respondent's blatant, long term disregard of the requirements of the Act and Chapter 7. This noncompliance cannot be viewed as the result of understandable, if inexcusable, ignorance. Streater Disposal continued both to operate without a permit and to operate improperly after receiving repeated notices of violation, participating in two compliance conferences and executing one compliance agreement. In light of the nature and duration of the violations proven, a penalty of \$5,000 is hereby assessed as a necessary aid to enforcement of the Act.

The Board sees little benefit in ordering the immediate closure of this site, despite Respondent's long history of non-compliance. The Respondent is ordered to cease and desist from violating the Act and Rules, and to make application for an operating permit. Any corrective steps necessitated by acceptance of special wastes such as the soda ash observed November 16, 1979 shall also be immediately taken.

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

ORDER

1. Respondent, Streater Disposal Service, Inc. is found to have violated Sections 9(c), and 21(b) and (e) of the Environmental Protection Act, and Rules 202(a)(1), 301, 303(a, b), 305(a, b, c), 306, 311, and 314(f) of Chapter 7: Solid Waste, and Rule 502 of Chapter 2: Air Pollution.

2. Respondent shall immediately cease and desist from violating the Act and above Rules (except 202(a)(1)), and shall immediately take any corrective steps necessitated by its earlier acceptance of special waste.


3. Within 14 days of the date of this Order, Respondent shall apply for any necessary operating and supplemental permits.

4. Within 150 [which brings it to April and reasonable weather] days of the date of this Order, Respondent's landfill shall be brought into total compliance with the Act and the Board's Rules.

5. Within 90 days of the date of this Order, Respondent shall pay, by certified check or money order payable to the State of Illinois, a penalty of \$5,000 which is to be sent to: Environmental Protection Agency, Fiscal Services Division, 2200 Churchill Road, Springfield, Illinois 62706.

IT IS SO ORDERED.

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



Christan L. Moffett, Clerk
Illinois Pollution Control Board