

ILLINOIS POLLUTION CONTROL BOARD
January 18, 1979

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
v.) PCB 78-86
)
JERRY FINTON, d/b/a JERRY FINTON)
DISPOSAL SERVICE,)
)
Respondent.)

MR. STEPHEN GROSSMARK, ASSISTANT ATTORNEY GENERAL, APPEARED ON
BEHALF OF THE COMPLAINANT.

HARTZELL, GLIDDEN, TUCKER & NEFF, ATTORNEYS AT LAW (MR. STEPHEN K.
SHEFFLER, OF COUNSEL), APPEARED ON BEHALF OF THE RESPONDENT.

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

This matter comes before the Board on the March 20, 1978
Complaint brought by the Illinois Environmental Protection Agency
("Agency"). Count I of the Complaint alleged that, from January 4,
1977 until March 20, 1978, the Respondent, Jerry Finton, d/b/a
Jerry Finton Disposal Service ("Mr. Finton"), accepted and
deposited liquid wastes at his sanitary landfill (although his
Operating Permit from the Agency only authorized the handling of
general solid waste exclusive of all liquid and hazardous wastes)
in violation of Rule 301 and Rule 310 of Chapter 7: Solid Waste
Regulations and Section 21(e) of the Illinois Environmental
Protection Act ("Act"). Count II of the Complaint alleged that,
on specified dates between February 11, 1976 and March 20, 1978,
the Respondent failed to deposit all refuse into the toe of the
fill or into the bottom of the trench in violation of Rule 301
and Rule 303(a) of Chapter 7: Solid Waste Regulations and Section
21(b) of the Act. Count III of the Complaint alleged that, on
specified dates between September 9, 1976 and March 20, 1978, the
Respondent failed to adequately spread and compact refuse as
rapidly as it was deposited, in violation of Rule 301 and Rule
303(b) of Chapter 7: Solid Waste Regulations and Section 21(b)
of the Act. Count IV of the Complaint alleged that, on specified
dates between February 11, 1976 and March 20, 1978, the Respondent
failed to apply adequate daily cover on all exposed refuse in
violation of Rule 301 and Rule 305(a) of Chapter 7: Solid Waste

Regulations and Section 21(b) of the Act. Count V of the Complaint alleged that, on specified dates between September 9, 1976 and March 20, 1978, the Respondent failed to place the requisite intermediate cover material on the landfill in violation of Rule 301 and Rule 305(b) of Chapter 7: Solid Waste Regulations and Section 21(b) of the Act. Count VI of the Complaint alleged that, on specified dates between April 20, 1977 and March 20, 1978, the Respondent failed to place the appropriate final cover on a portion of the landfill in violation of Rule 301 and Rule 305(c) of Chapter 7: Solid Waste Regulations and Section 21(b) of the Act. Count VII of the Complaint alleged that, during a period beginning on September 9, 1976 and continuing to the date of the filing of the Complaint, including, but not specifically limited to, September 9, 1976, the Respondent caused or allowed the open burning of refuse at the site in violation of Rule 311 of Chapter 7: Solid Waste Regulations; Rule 502 of Chapter 2: Air Pollution Control Regulations; and Section 9(c) of the Act. Count VIII of the Complaint alleged that, on specified dates from January 20, 1977 until March 20, 1978, evidence of rat and/or vector activity was observed on the site and adequate measures to control dust and vectors were lacking, in violation of Rule 301 and Rule 314(f) of Chapter 7: Solid Waste Regulations and Section 21(b) of the Act. A hearing was held on August 10, 1978. The parties filed a Stipulation and Proposal for Settlement on December 14, 1978.

Mr. Finton is, and has been, operating a refuse disposal facility (the "facility") on a site consisting of approximately 7.5 acres near the City of Warsaw in Hancock County, Illinois. The Respondent holds an Operating Permit issued by the Agency (i.e., Operating Permit Number 1974-66-OP) which authorizes the facility to handle general solid waste, exclusive of all liquid and hazardous waste on the site.

It is stipulated that: (1) During a period beginning on January 4, 1977, and ending on July 21, 1977, Mr. Finton accepted and deposited liquid, hazardous waste at the refuse disposal facility on approximately five or six different occasions. (See: Exhibit U*). Approximately three hundred 55-gallon barrels were accepted and deposited (Mr. Finton received between \$1.25 and \$3.00 for each barrel of liquid, hazardous waste that was accepted

*All exhibits are attached to the Statement of Stipulated Settlement and are incorporated by reference therein.

and deposited at the site); (2) On at least nine occasions during the time frame of the Complaint of this case, refuse was not deposited into the toe of a fill or into the bottom of a trench at the refuse disposal facility; (3) On at least eight different occasions during the time frame of the Complaint of this case, refuse was not spread and compacted as rapidly as it was deposited; (4) On at least nine different occasions since February 11, 1976, a compacted layer of at least six inches of cover material was not placed on the deposited refuse at the end of the working day; (5) On at least four different occasions since September 9, 1976, a compacted layer of at least twelve inches of cover material was not applied over surfaces of the refuse disposal facility when no additional refuse was to be deposited within 60 days; (6) During a period beginning on April 20, 1977, and ending on August 11, 1977, there were occasions when a compacted layer of not less than two feet of cover material was not placed over the entire surface of each portion of the final lift within 60 days following the placement of refuse in the final lift; (7) It takes approximately two hours to deposit refuse at an appropriate point at the refuse disposal facility, spread and compact the refuse, and apply cover each working day; (8) Since January 20, 1977, there has been evidence of rat activity at the site in that rat tracks and burrows have been observed at the refuse disposal facility. (See: Exhibit R¹ which contains a photograph taken by an Agency inspector of rat tracks at the site). Mr. Finton admits the most effective way to control vectors is to meticulously follow Chapter 7 cover requirements; (9) Mr. Finton admits that the previously delineated facts indicate that violations of the Act and Board's Solid Waste Regulations occurred; (10) Mr. Finton attempts to monitor the refuse accepted and deposited at the facility, so that refuse that may be smoldering or burning when accepted does not cause a fire after it is deposited at the site. (See: Exhibits J and K which contain photographs taken by Agency inspectors of the open burning which occurred on the property in question). However, Mr. Finton does not accept responsibility for the open burning that occurred at the refuse disposal facility on September 9, 1976; and (11) The refuse disposal facility has been inspected by the Agency on at least 15 different occasions since February 11, 1976. After each inspection, a copy of the Agency's inspection report was either given to Mr. Finton, given to one of Mr. Finton's agents, or mailed to Mr. Finton within two weeks of the inspection. Within two weeks of most of the inspections, the Agency wrote Mr. Finton a letter informing him of operational problems observed by Agency inspectors. On one occasion, the Agency sent Mr. Finton a Notice of Enforcement. Thus, Mr. Finton has had extensive notice from the Agency regarding operational problems at the facility. (See: Exhibits A through I which consist of letters and the Notice of Enforcement sent by the Agency and received by Mr. Finton). On several of the Agency inspections, photographs were taken by Agency inspectors of the conditions at the site. (See: Exhibits J through Z and A¹ through W¹).

The Respondent has indicated that periods of particularly wet and cold weather and equipment breakdowns have, in the past, caused operational problems at the site. At the hearing, the Respondent's attorney described the situation as follows:

"... The Respondent wishes to note for record that his equipment is, because of location in the particular area, difficult to repair promptly, as there is some 40 or 50 miles distance to a proper repair firm, and that he has had difficulty in obtaining equipment during a period of breakdown..." (Record, p. 10).

In the Statement of Stipulated Settlement, the Agency noted that "since the filing of the Complaint in this case, there has been substantial improvement in the operation of the subject refuse disposal facility." (Stipulation, p. 8). The proposed Compliance Program and settlement agreement provides that the Respondent will: (1) immediately come into compliance with the Act and the Board's Solid Waste Regulations; (2) cease and desist from further violations of the Act and Chapter 7; and (3) pay a stipulated penalty of \$2,000.00 in four equal installments of \$500.00 each within 90 days, 180 days, 270 days, and 360 days of the entry of the Board's Opinion and Order in this case.

In evaluating this enforcement action and proposed settlement, the Board has taken into consideration all the facts and circumstances in light of the specific criteria delineated in Section 33(c) of the Illinois Environmental Protection Act. Incinerator, Inc. v. Illinois Pollution Control Board, 59 Ill. 2d 290, 319 N.E. 2d 794 (1974).

Accordingly, the Board finds that the Respondent has violated Rules 301, 303(a), 303(b), 305(a), 305(b), 305(c), 310, and 314(f) of Chapter 7: Solid Waste Regulations and Section 21(b) and Section 21(e) of the Illinois Environmental Protection Act. All other allegations of violations are hereby dismissed. The Board hereby imposes the stipulated penalty of \$2,000.00 against the Respondent.

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 has violated Rules 301, 303(a), 303(b), 305(a), 305(b), 305(c), 310, and 314(f) of Chapter 7: Solid Waste Regulations and Section 21(b) and Section 21(e) of the Illinois Environmental Protection Act.

2. The Respondent shall cease and desist all further violations.

3. The Respondent shall immediately come into compliance with the Act and the Board's Solid Waste Regulations.

4. The Respondent shall pay the stipulated penalty of \$2,000.00 in four equal installments of \$500.00 each within 90 days, 180 days, 270 days, and 360 days of entry of the Board's Opinion and Order, payment to be made by certified check or money order to:

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

5. The Respondent shall comply with all the terms and conditions of the Stipulation and Proposal for Settlement filed December 14, 1978, which is incorporated by reference as if fully set forth herein.

6. All other allegations of violations are hereby dismissed.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 18th day of January, 1979 by a vote of 4-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board