

ILLINOIS POLLUTION CONTROL BOARD
October 4, 1978

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
v.) PCB 77-290
)
FRANK RECORD,)
)
Respondent.)

MR. JOHN VAN VRANKEN, ASSISTANT ATTORNEY GENERAL, APPEARED ON BEHALF OF THE COMPLAINANT.

MR. JAMES D. REYNOLDS, ATTORNEY AT LAW, APPEARED ON BEHALF OF THE RESPONDENT.

OPINION AND ORDER OF THE BOARD (by Dr. Satchell):

This matter comes before the Board upon a complaint filed on November 7, 1977 by the Environmental Protection Agency (Agency). The Agency alleges that Respondent, Frank Record, has violated Rule 202(b)(1) of the Chapter 7: Solid Waste Rules and Regulations (Chapter 7) and Section 21(e) of the Environmental Protection Act (Act); and Rule 305(c) of Chapter 7 and Section 21(b) of the Act. A hearing was held in this matter on May 17, 1978.

The Board must make determinations on two offers of proof prior to considering the case. The Board will accept as exhibits Complainant Request to Admit Facts. No foundation is necessary under Procedural Rule 314 other than proof of service. Under the same Rule if no response or objection is received within twenty days after service the facts requested to be admitted are deemed admitted. In this case the facts requested to be admitted are deemed admitted. The second offer of proof concerns inspection reports made by Gilbert Stauffer submitted as Complainant's Exhibits 3-7. These exhibits were submitted as business records based on a foundation of testimony of Terry G. Ayers, an employee of the Agency. The Supreme Court Rules of Practice, Rule 236 provides that writing or record made in the regular course of business at the time of the event or within a reasonable time thereafter is admissible as evidence. The Rule further provides other circumstances--including lack of personal knowledge by the entrant or maker may be shown to affect its weight, but shall not affect its admissibility. The Board finds that Complainant's Exhibits marked 3-7 should be admitted as evidence.

Mr. Record stated that he had run a landfill at this site from 1958 to June 1977 (R. 15,16). He also stated that he has never had a permit for the site (R. 17). Respondent quit using the site in June 1977 (R. 16). At that time he had cover applied but he doesn't know how deep it was; he presumes two or three feet (R. 17, 18).

On August 5, 1977 a total of 14 borings were taken every 20 yards along the east central and west central areas of the site (Comp. Ex. 7). Of these borings, 10 had adequate cover (Comp. Ex. 7). The remaining borings showed six inches to one and one half feet of cover (Comp. Ex. 7). Two areas remained uncovered (Comp. Ex. 7). On May 15, 1978 an inspection was made (R. 25). It appeared cover had been recently applied; there was some surface litter (R. 25). Three borings were taken in the north-western portion of the site and two were taken in the eastern Section (R. 26). The cover was from six inches to one and one half feet deep (R. 26).

The Board finds that the admissions alone would be sufficient to find a violation of both operating without a permit in violation of Rule 202(b)(1) of Chapter 7 and Section 21(e) of the Act and failure to apply final cover in violation of Rule 305(c) and section 21(b) of the Act; however, the evidence presented at the hearing further substantiates both violations. The record does not provide much information concerning Section 33(c) of the Act. It is difficult to discern to what extent Mr. Record used the site in recent years. He states he takes the majority of his refuse to the city-county landfill in Peoria County or to the Fulton County Landfill (R. 16). According to Complainant's Exhibit 7, approximately five to six acres of an eight acre site have been filled. Mr. Record refers to the area as "a couple acres, two or three acres" (R. 20). No one establishes if this is the entire area used since 1958 or since July 27, 1974, the time the allegations of the complaint begin. The area is an old strip mine (R. 19). Leachate was observed falling from the north face into the strip mine pit and in one other area (R. 26). No geological information is provided.

It is apparent that an unlicensed landfill has been run here for a number of years. Respondent did know of the existence of the Agency and that there were prescribed rules concerning how to run a sanitary landfill (R. 18). Respondent has quit using the site and has made some attempt to place final cover; however, there is still work that needs to be done. The Board will require that Respondent either acquire the proper Agency operating permit or submit to the Agency a proper closure plan within 60 days of this order which shall be implemented within 90 days after Agency approval.

The Board will also assess a penalty of \$250 to aid the enforcement of the Act.

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. Frank Record is found in violation of Rule 202(b)(1) of Chapter 7: Solid Waste Regulations and Section 21(e) of the Act and of Rule 305(c) of Chapter 7 and Section 21(b) of the Act.
2. Respondent shall either obtain the proper Agency operating permit within 90 days of this order or submit to the Agency within 60 days of this order a proper closure plan which shall be implemented within 90 days of Agency approval.
3. Respondent shall pay a penalty of \$250 within 35 days of this order. Payment shall be by certified check or money order payable to:

Fiscal Services Division
Illinois Environmental Protection Agency
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 4th day of October, 1978 by a vote of 5-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board