

ILLINOIS POLLUTION CONTROL BOARD
April 27, 1978

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
vs.) PCB 77-284
)
JACK THOMPSON d/b/a)
WARREN DISPOSAL SERVICE,)
)
Respondent.)

MS. JUDITH S. GOODIE, ASSISTANT ATTORNEY GENERAL, APPEARED ON BEHALF OF THE COMPLAINANT.
MR. WILLIAM A. KELLY OF NACK, RICHARDSON AND NACK, 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 by the Environmental Protection Agency (Agency) on November 2, 1977. The complaint alleges that Jack Thompson d/b/a Warren Disposal Service has caused or allowed the operation of a solid waste management site within the north half of the northeast quarter of the southwest quarter of section 19, Township 29 north, Range 5 east of the fourth principal meridian in Jo Davies County, Illinois without an operating permit in violation of Rule 202(b) of Chapter 7: Solid Waste Regulations (Chapter 7) and Section 21(e) of the Environmental Protection Act (Act); that Respondent is in violation of Rule 305(a) of Chapter 7 and Section 21(b) of the Act, Rule 305(b) of Chapter 7 and Section 21(b) of the Act, Rule 303(a) of Chapter 7 and Section 21(b) of the Act, Rule 303(b) and Section 21(b) of the Act, Rule 306 of Chapter 7 and Section 21(b) of the Act, Rule 304 of Chapter 7 and Section 21(b) of the Act, and Rule 308 of Chapter 7 and Section 21(b) of the Act. On December 30, 1977 the parties filed a stipulation incorporating by reference the entire transcript and all exhibits from a hearing on October 31, 1977 in the matter of Jack Thompson d/b/a Warren Disposal Service vs. EPA, PCB 76-249, a variance proceeding. The site and the parties in the present proceeding and in PCB 76-249 are identical.

On January 18, 1978 a hearing was held and additional testimony was taken. No interested citizen testimony was received. At the January hearing the complaint was amended to conform to the proof pursuant to Procedural Rule 326. Respondent had no objection to the amendment.

In PCB 76-249 (decided February 2, 1978) this Board denied the Respondent herein a variance for three acres of this nineteen acre site because of lack of a showing of hardship and the high potential for environmental damage. There is no question in this case that Mr. Thompson is operating a refuse disposal site without a permit; this is admitted even by Respondent's attorney (January R. 83).

Mr. Thompson has been operating this site since October of 1966 (October R. 6). His site receives 125 to 150 compacted cubic yards of refuse per week. This figure never exceeds 200 cubic yards per week (October R. 6). Under Mr. Thompson's management some days the site is not used at all (October R. 13). On the days the site is used his men will bring in a load of refuse, empty the truck then go out for more refuse (October R. 13). After the route is completely picked up the operator will "get out the tractor and bury that day's refuse" (October R. 13). This may occur any time from 2:00 P.M. to 8:00 P.M. (October R. 14).

Agency inspectors have visited the site on several occasions. On May 2, 1977 Paul Steadman, an Agency inspector, measured the cover with an auger. He found daily intermediate and final cover to all be inadequate (October R. 155). Areas that required intermediate cover had an average of only four inches of cover; areas of final cover had only six to eight inches of cover (October R. 155). On November 7, 1975 Mr. Steadman, using Mr. Thompson's own map of which areas had received final and intermediate cover, found the depth inadequate (October R. 165).

Other inspections revealed that on July 22, 1976 there was uncompactd refuse on the site (January R. 14, 15). Also that day shortly before noon there was present at the site greater than 200 cubic yards of refuse but less than 500 cubic yards (January R. 15). At a site that never exceeds receiving 200 cubic yards per week (October R. 6) this would indicate daily cover had not occurred. On February 3, 1977 the refuse had a snow cover, as it did not snow in Jo Davies County that day once again lack of daily cover is indicated (January R. 25-27). Only portions of this refuse was spread and compacted.

On September 23, 1976 there were no personnel on the site nor was there any indication the site was open during the inspection. Three young children were present playing in the garbage (January R. 22, 23). The presence of children playing in the trash is undesirable and is evidence of inadequate site restriction; however, the presence of children on a site not open in and of itself is not sufficient to make a finding of lack of personnel. This is also not sufficient to prove scavenging. To show scavenging as a violation discarded materials must be intended to be removed or actually removed from the site. The evidence presented does not indicate this is the case. Consequently the Board will dismiss Count VIII alleging a violation of Rule 308, prohibiting scavenging.

Litter was observed on the site on several occasions including September 10, 1975, July 22, 1976, and May 2, 1977 (October R. 144, 154, January Comp. Ex. 3). The Board finds that there is sufficient evidence to find violations of all the alleged counts but count number VIII. These violations would be of Rule 202(b) of Chapter 7 and Section 21(e) of the Act and Rules 305(a), 305(b), 303(a), 303(b), 304 and 306 of Chapter 7 and Section 21(b) of the Act. The violation of Rule 304 is based on the fact that since the other violations exist obviously there is not sufficient supervision at the site to comply with the Regulations and the Act.

In formulating a remedy the Board must consider Section 33(c) of the Act. Mr. Thompson does provide disposal service for the communities of Warren, Apple River, Scales Mound, Nora and Waddams Grove and Apple Canyon State Park. However, as noted in the variance proceeding the lack of an impermeable material covering the bedrock at the site (October Resp. Ex. G.) and the lack of available cover material at the site (October R. 194) provides a high potential for water pollution. Respondent was aware since August of 1974 that the Illinois State Geological Survey had expressed concern about the potential for water pollution at the site (October Resp. Ex. A., R. 64). There are other landfills in the area (October R. 19). Petitioner has not made any progress toward finding a new site (January R. 68). Respondent has not changed or attempted to improve his mode of operation during the variance proceeding or this enforcement (January R. 67). He has made no effort to utilize the one acre of his nineteen that the Agency had stated could possibly be considered for a site (January R. 66-68). No doubt Mr. Thompson's disposal service is of some social and economic value; however, this is greatly undermined by the potential for water pollution in the area.

Since Mr. Thompson has been looking for a new site since the filing of his original variance petition on October 4, 1976 with no showing of progress the Board has no choice but to order Mr. Thompson to cease and desist his violations of the Chapter 7: Solid Waste Regulations and the Act. Respondent has financially benefitted since at least June 19, 1975 by not running his landfill site in an environmentally sound manner or by not obtaining a better site for waste disposal. However the record does indicate Mr. Thompson's operation is relatively small. Therefore the Board shall assess a penalty of \$750.00 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 Pollution Control Board that:

1. Jack Thompson d/b/a Warren Disposal Service is found to be in violation of Rule 202(b) of the Chapter 7: Solid Waste Regulations and Section 21(b) of the Environmental Protection Act and Rules 305(a), 305(b), 303(a), 303(b), 304, and 306 of Chapter 7 and Section 21(b) of the Act.
2. The allegation of violation of Rule 308 of Chapter 7 is dismissed.
3. Respondent shall cease and desist all further violations of the Act and the Regulations.
4. Respondent shall pay a penalty of \$750.00 within 35 days of this order. Payment shall be by certified check or money order payable to:

State of Illinois
Fiscal Services Division
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 27th day of April, 1978 by a vote of 5-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board