

ILLINOIS POLLUTION CONTROL BOARD
April 27, 1978

ENVIRONMENTAL PROTECTION AGENCY,)
)
 Complainant,)
)
)
 v.) PCB 77-291
)
)
 DONALD BREWER, d/b/a BREWER)
 AUTO SALES AND SALVAGE, and)
 WILSON SHERFY,)
)
 Respondents.)

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

This matter comes before the Board on a November 9, 1977 Environmental Protection Agency Complaint charging Respondent Brewer with violations of Rule 202(a) of Chapter 7: Solid Waste Regulations and Section 21(e) of the Illinois Environmental Protection Act (Act). He is also charged with violation of Section 4(d) of the Act for refusing access to his property to Agency representatives. Respondent Sherfy is charged with violating Section 21(f) of the Act by transporting refuse to the site owned by Brewer. Hearings were held in Gillespie, Illinois on January 10, 1978; and February 15, 1978.

Respondent Brewer owns and operates an auto salvage facility near the City of Staunton in Macoupin County. Respondent Sherfy is employed as a General Foreman at the Owens-Illinois Corporation in Mt. Olive.

The Owens-Illinois facility uses printing ink in the manufacture of cardboard boxes. The liquid ink wastes are evaporated and the remaining sludge is put into 55 gallon drums. These drums are stored on the Owens premises. When the storage facility become full, Mr. Sherfy, who had a hauling contract with Owens, would be contacted to remove the barrels. Generally the drums were hauled to a landfill site in Staunton for disposal.

On Sunday, July 17, 1977, Sherfy picked up a load of approximately 35-40 barrels at the Owens plant. Removal on weekends was not unusual because normally he could obtain the key to the landfill site from the operators. On this occasion he was unable to do so and therefore proceeded to Respondent Brewer's salvage facility. Brewer agreed to take these barrels as a favor to Sherfy and the record shows that it was intended to be a temporary measure. Although some evidence indicates that Sherfy was going to sell the barrels, it appears more probable from the record that the barrels were to be removed to the Staunton landfill when it opened again.

Upon a complaint, Agency representatives went to Brewer's salvage yard on August 11, 1977. With the permission of an employee of Brewer, they were allowed to inspect the site. The barrels were found at the north side of the property near the head of a temporary creek. Some of the barrels were on wooden pallets; about 15 had been knocked over. There was a purplish stain on the ground near these barrels. Some of the barrels contained dried ink sludge and rags. The Agency representatives went back to Brewer's office. At this time, Brewer refused to let them go back to the lot to take samples or photographs since the representatives refused to name the complaining party.

On August 12, 1977 Agency representatives returned to Brewer's site with a Macoupin County Deputy Sheriff. The Agency representatives attempted to explain Section 4(d) of the Act which grants the Agency the right to conduct reasonable investigation on private property. Brewer refused access unless the Agency obtained a court order. The representatives left and on that afternoon the Attorney General obtained a Temporary Restraining Order (TRO) against Brewer. The representatives returned with the TRO that evening. After discussing the TRO with Brewer, he allowed them access to the back of the lot. There Sherfy was removing the barrels. He had been asked to do so by Owens-Illinois, which had received a call from the Agency during that afternoon. The barrels were returned to the storage area at the Mt. Olive plant.

Operation of a new solid waste management site without a permit is the basis of a 202(a) violation. Mr. Brewer contends that he did not operate such a site because the barrels were there only for temporary storage and that this was a one-time occurrence. The permit system is designed to assure the proper disposal of refuse so as to prevent injury to the public and the environment. To allow unsupervised disposal would undermine both the permit system and the intent of the Act. This policy is reflected in a broad definition of solid waste management that includes not only the disposal of solid wastes but their storage,

Chapter 7, Rule 104(u). In reviewing the facts of the case, the Board finds that Respondent Brewer did violate Rule 202(a) by storing these barrels without an Agency permit. The Board has long found the operation of a solid waste management site without a permit to be a violation of 21(e) of the Act and so concludes in this case. In considering a penalty for these violations, the Board has considered those factors contained in Section 33(c) of the Act. In weighing the violation of the Act against the unlikelihood of a future occurrence and the fact that the situation has been corrected, the Board feels that no fine is appropriate.

In considering the allegation of a Section 4(d) violation, the Board must analyze the authority granted by the Act to conduct inspections against the constitutional restraints imposed. Inspection in this case was conducted at a reasonable time and the Agency representatives first secured the permission of an employee who had apparent authority to permit an inspection. When Mr. Brewer later refused further inspection, the Agency representatives had ascertained that there was probable cause to suspect a violation of the Act. Legislation by the states carries a presumption of constitutional validity and Respondent has presented nothing that overcomes this presumption.

Respondent Sherfy is charged with a violation of Section 21(f) of the Act for disposing of refuse at a site which did not meet the requirements of the Act. Mr. Sherfy knew that lawful disposal should be at a site other than Brewer's. He has presented no reason other than his own convenience for leaving the barrels at Brewer's nor has he explained the reason for leaving them there for almost a month when he knew the landfill site where disposal would be permitted would have been open the next day. For these reasons the Board finds Respondent Sherfy in violation of Section 21(f) 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. Respondent Donald Brewer is found in violation of Rule 202(a) of Chapter 7 and, therefore, in violation of Section 21(e) of the Act. No penalty is assessed.
2. Respondent Donald Brewer is found in violation of Section 4(d) of the Act for failure to allow reasonable investigation of his property by Agency representatives. A penalty of \$100.00 is assessed.

3. Respondent Wilson Sherfy is found in violation of Section 21(f) of the Act by transporting and disposing of refuse at a site which does not meet the requirements of this Act. A penalty of \$100.00 is assessed.
4. Within 35 days of the date of this Order Respondents shall pay as penalties the sum of \$100.00 each, payment to be made by certified check or money order 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