

ILLINOIS POLLUTION CONTROL BOARD
April 27, 1978

ENVIRONMENTAL PROTECTION AGENCY,)
)
 Complainant,)
)
 v.) PCB 77-292
)
 SKAGGS CONSTRUCTION COMPANY,)
 INC., a Delaware Corporation,)
)
 Respondent.)

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

This case is before the Board on the November 10, 1977 Complaint filed by the Environmental Protection Agency (Agency) charging violations of Rule 305(c) of the Pollution Control Board Rules and Regulations, Chapter 7: Solid Waste, Rule 5.07(b) of the Department of Public Health, Division of Sanitary Engineering Rules and Regulations for Refuse Disposal Sites and Facilities, and, therefore, Section 21(b) of the Illinois Environmental Protection Act (Act). Rule 5.07(b) as incorporated by Sections 49(b) and 49(c) of the Act, applies to acts committed prior to July 27, 1974 and Rule 305(c) applies to acts thereafter. A hearing was held on January 17, 1978 in Springfield, Illinois.

Respondent owns a 5.4 acre tract near Bunn Park in the south-east portion of Springfield. The site is bisected by a small stream; the northern half of the lot is approximately 30-40 feet higher than the southern half. Since 1967 the Respondent used the site to dispose of asphalt, brick, sand, dirt, and other related materials in conjunction with highway construction projects it had in the Springfield area. This activity was carried on pursuant to an operating permit (Permit No. 1970-1S-34; April 8, 1970) issued by the Department of Public Health, the predecessor to the Agency, in the supervision of solid waste management.

Although testimony presented is conflicting on this point, it appears that Respondent's active use of the disposal site ended in 1970 (R.45, R.47). Rule 5.07(b) and Rule 305(c) are substantially the same as applied to the instant case. Both require the placement of a compacted layer of at least two (2) feet of final cover material after active dumping of refuse ends at the site. Agency inspections of the site on October 28, 1970, May 14, 1973, and June 22, 1973 showed that only part of the southern half of the property had been covered. After each inspection, Respondent was notified by letter of the site conditions. Nicholas Skaggs, owner of controlling interest in Skaggs Construction Company accompanied the Agency inspector on a July 18, 1973 tour. A similar inspection was made

on August 2, 1973 and later on April 20, 1977. Another inspection was made on December 5, 1977 at which Mr. Skaggs and his son, who along with Skaggs' grandson manages Respondent's daily operations, were present. During this period, no changes in the site were made. A final inspection on January 6, 1978, at which Mr. Skaggs and his grandson were present, showed that some leveling of the dump site had occurred and fill had been applied to parts of the north side.

The Board finds the Respondent in clear violation of Rule 5.07(b). No violation of Rule 305(c) can be found because Respondent ceased operation before the effective date of the Board's Solid Waste Regulations. Respondent's conduct is actionable through the saving clause of Section 49(c) of the Act. There can be no violation of Section 21(b) in this instance because Respondent did not violate any regulation "adopted by the Board".

The latest effort to grade and cover the site, initiated by Skaggs' son and grandson, shows present good intentions. This does not, however, excuse the fact that little or no effort was made to cover the site during the six-year interval since active use ended.

While Complainant must establish the elements of the offense, Respondent has the burden of proving that compliance would be unreasonable under Section 33(c) of the Act. At the hearing, Mr. Skaggs expressed the desire to ultimately use this site for residential or commercial purposes. Respondent contended that because two sewer easements traverse the property, filling may be technically infeasible. Respondent's contention is based on providing roughly 25 feet of fill to level the site and not the 2 feet necessary to comply with the Board's regulations. The Board finds no convincing evidence that undue hardship will result from requiring compliance with the standard in Rule 5.07(b).

Considerable evidence was offered concerning the use of the site by adjacent property owners as a disposal site for household refuse. The Board has previously held that an individual can be held liable for the dumping conducted by others as a Section 21(b) violation. EPA v. Village of Karnak, 74-381, 16 PCB 13 (March 6, 1975). However, such a violation was not alleged in the Complaint nor did the Agency amend its Complaint pursuant to Board Procedural Rule 328. Such evidence is therefore not considered in determining the extent of the alleged violation or the penalty imposed.

Because the materials placed into the dump were not putrescible, the penalty for failure to cover will be set at \$200. The respondent is given 120 days in which to complete the installation of final cover.

This opinion constitutes the findings of fact and conclusions of law of the Board in this matter.


ORDER

IT IS THE ORDER of the Pollution Control Board that:

1. Respondent Skaggs Construction Company, Inc., is found to have violated Rule 5.07(b) of the Department of Public Health Rules and Regulations for Refuse Disposal Sites and Facilities for failure to apply final cover to its solid waste management site, from the period of six months after terminating operations until July 27, 1974.
2. Respondent shall pay as a penalty the sum of \$200., payment to be made within 45 days of the date of this order, by certified check or money order to:

State of Illinois
Fiscal Services Division
Environmental Protection Agency
2200 Churchill Road
Springfield, Illinois 62706
3. Respondent shall apply final cover pursuant to Rule 5.07(b) within one hundred twenty (120) days of the adoption of this order, and shall post a performance bond of \$5,000 to assure correction of the violation alleged within the time prescribed.

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