

ILLINOIS POLLUTION CONTROL BOARD  
March 3 , 1977

ENVIRONMENTAL PROTECTION AGENCY,            )  
  )  
  Complainant,            )  
  )  
  v.                            )       PCB 75-401  
  )  
GEORGE D. GILLEY, JOHN S. GEUSS,            )  
JOSEPH C. SZABO, NORMAN WILTON            )  
and GM WRECKING COMPANY,                    )  
  )  
  Respondents.            )

Mr. James L. Dobrovolny, Assistant Attorney General, appeared on behalf of Complainant.  
Mr. Dennis C. Gilley appeared on behalf of Respondents.

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

The original complaint in this matter was filed October 14, 1975 by the Environmental Protection Agency (Agency). Subsequently amended complaints were filed adding or changing Respondents. The third amended complaint filed January 26, 1976 alleges that Respondents Gilley, Geuss, Szabo and Wilton, beginning on or about July 27, 1974 and continuing to the filing of the complaint have caused or allowed the use or operation of a parcel of land as a solid waste management site without an operating permit issued by the Agency in violation of Rule 202(b) of the Solid Waste Regulations (Regulations) and hence, Sections 21(b) and 21(e) of the Environmental Protection Act (Act). Count II alleges that Respondent, GM Wrecking Company, has disposed of refuse at the same site in violation of Section 21(f) of the Act. The site in question is a parcel of land located to the southwest of the intersection of Sauk Trail Road and Burnham Avenue, in the East 1/2 of the Northeast 1/4 of Section 30, Township 35 North, Range 15 East, in Cook County, Illinois.

At a hearing on December 10, 1976 the four individual Respondents and the Agency submitted a stipulation for the Board's approval. Respondent GM Wrecking did not appear at the hearing.

The stipulated background facts include that the Central National Bank of Chicago, as a trustee under Trust No. 18889, at all times pertinent hereto, has been the legal owner of the site. The beneficiaries of this trust are George D. Gilley, John S. Geuss, Joseph C. Szabo and Norman Wilton. On July 9, 1975 an investigation of the site was conducted by R. F. Thiesen, mayor of Sauk Village, and his assistant, Mr. Theodore, in response to a phone call made by an area resident. The mayor's observations were forwarded to the Agency. After an Agency inspection of the site on July 16, 1975 a warning letter was sent to Mr. Gilley. In response Mr. Gilley confirmed Mayor Thiesen's observation that Mr. Martin of GM Wrecking (Stip. 4) placed refuse on the site. (Ex. D states . . . "Mr. James Martin of Martin Trucking . . ."). Agency inspections were made on August 12, 1975, September 2, 1975, February 19, 1976 and June 30, 1976. On these occasions refuse and garbage had been dumped; there was inadequate cover; litter, flies and rats were observed; plus there was inadequate site preparation and facilities (Ex. B, F, J).

On July 22, 1976 Mr. Gilley met with an Agency representative. Mr. Gilley indicated his willingness to remedy the situation. He indicated he would make arrangements with a heavy equipment contractor to properly close the site within sixty days. On October 20, 1976 inspection of the site indicated the site was closed and covered. Additionally, a trench had been dug and a berm erected at the site entrance in order to restrict access thereto.

The terms of the stipulated agreement are that Respondents Gilley, Geuss, Szabo and Wilton admit to allowing since July 27, 1974 the use or operation of a refuse disposal site at the aforesaid location without an operating permit in violation of Rule 202(b) of the Regulations and Section 21(b) of the Act. These Respondents do contend that this operation occurred without their knowledge. Respondents further agree that should they desire to reopen the site they would obtain all necessary operating permits. The issue of a penalty was expressly left to the discretion of the Board.

The Board has previously held that a Rule 202(b) violation does not constitute an open dumping violation under Section 21(b) of the Act, EPA v. E & E Hauling, Inc., 16 PCB 215 (1975). The allegation of violation of Section 21(b) of the Act is dismissed. The Board does find the stipulation acceptable under Procedural Rule 333. The Board finds on the basis of the facts stipulated that Respondents are in violation of Rule 202(b) of the Regulations and Section 21(e) of the Act. Concerning the penalty

the Board must consider Section 33(c) of the Act. No formal presentation of these facts was made, however, some factors are obvious. The injury in a situation such as is presented here is the presence of vectors, rats and flies, which are nuisances and bearers of disease. There is also the possibility of leachate forming and polluting streams and groundwater supplies. The situation here has been corrected which does show compliance is technically practicable and economically reasonable. No social or economic value of the pollution source has been shown. No site is suitable for open dumping. The question of whether a permitted landfill would be suitable to the site has not been addressed. In this situation the Board finds a penalty is necessary to discourage others from allowing open dumping or allowing the operating of a solid waste management without a permit. The Board finds that the above Respondents shall be jointly and severally assessed a fine of \$500.

Respondent GM Wrecking did not appear. The Agency did present evidence concerning their alleged violations. Mayor Theisen testified that the day of his investigation there were large trucks dumping at the site and that these were GM Wrecking trucks (R. 8, 9). He further stated that on that same day he had public works personnel dump a couple of loads of clay across the temporary access road and that inspection the following day revealed that the access had been reopened (R. 12). Mr. Gilley stated that when contacted by the other respondents GM Wrecking did clean up the site (R. 3). The Board has been given no other information. Procedural Rule 320 states that failure of a party to appear at the hearing shall constitute default and that the Board shall enter such order as is appropriate based on the evidence adduced at the hearing. GM Wrecking was served with notice of the complaint involved. On the basis of the information given at the hearing the Board finds that GM Wrecking has disposed of refuse at a site that does not meet the requirements of the Act or of the regulations thereunder in violation of Section 21(f) of the Act. Again prior to determining a penalty the Board must consider the factors of Section 33(c) of the Act. This analysis would be the same as related to the other respondents. The injury is not only the eye sore it makes but the potential for the breeding of disease carrying vectors and the formation of leachate which could flow into the waters of the State. There is no social value in open dumping. The economic value to GM Wrecking is an economic detriment to those who suffer the consequences and must clean up the site. The value of the site as a permitted

landfill and its priority of location were not addressed. Compliance has been attained and is feasible. The Board finds that in the case of GM Wrecking as with the other Respondents that a fine is necessary to aid the enforcement of the Act. Flies and rats were observed at the site (R. 10, Ex. B, F, J). GM Wrecking has no right to promote breeding grounds for vectors at the public expense or at the expense of unknowing landowners. In mitigation GM Wrecking did remove the waste. For these reasons and to discourage other would be violators the Board assesses a penalty of \$1,000.

This Opinion constitutes the Board's findings of fact and conclusions of law in this matter.

#### ORDER

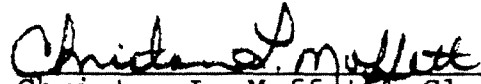
It is the order of the Pollution Control Board that:

1. Respondents Gilley, Geuss, Szabo, and Wilton are found to be in violation of Rule 202(b) of the Solid Waste Regulations and Section 21(e) of the Environmental Protection Act. The Section 21(b) allegation of violation is dismissed.
2. Respondent GM Wrecking is found to be in default and in violation of Section 21(f) of the Act.
3. Respondents shall refrain from any future operation of the site without the proper operating permit.
4. Respondents Gilley, Geuss, Szabo, and Wilton shall jointly and severally pay a fine of \$500. Respondent GM Wrecking shall pay a fine of \$1,000. All fines will be paid within 35 days of this order. Payment shall be by certified check or money order payable to:

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

Mr. Jacob D. Dumelle concurred.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 3<sup>RD</sup> day of March, 1977 by a vote of 5-0.

  
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Christan L. Moffett, Clerk  
Illinois Pollution Control Board