

ILLINOIS POLLUTION CONTROL BOARD
September 15, 1977

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,)
)
 Complainant,)
)
 v.) PCB 77-187
)
 CITY OF MT. VERNON, a municipal)
 corporation and HUMBLEWIT FARMS, INC.,)
)
 Respondents.)

ORDER OF THE BOARD (by Mr. Young):

This matter is before the Board on the Respondent Humblewit Farm's Motion to Dismiss and/or Make More Specific filed on August 18, 1977. The Complaint was filed July 11, 1977, charging that both Respondents failed to place a final cover on the solid waste management site. The two-count Complaint alleges that Respondents are in violation of Rule 5.07(b) of the Public Health Regulations (Count I) and Rule 305(c) of Chapter 7 of the Board's Solid Waste Rules and Regulations (Count II).

The Complaint further alleged that the City of Mt. Vernon sold the site to Humblewit Farms on January 7, 1974, after closing it for solid waste disposal in July, 1970 (Com. 4-5, p2).

In considering these allegations in a light most favorable to Complainant, the Board is obliged to grant the Motion to Dismiss Counts I and II because neither states a cause of action.

In Count I the Complaint alleges violation of Public Health Rule 5.07(b). However, the Complaint further states that Respondent purchased the disposal site on January 4, 1974, after the Public Health Rules were repealed on July 27, 1973 (Com. 5 p2; 9 p3). Count I is, therefore, fatally defective and must be dismissed.

Complainant bases the claim in Count II upon Rule 305(c). This Rule which governs the final cover procedures of solid waste sites must be read in conjunction with Rule 301 which provides that no person shall cause or allow the operation of a sanitary

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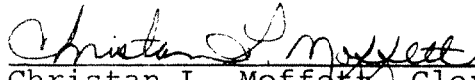
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landfill unless each requirement of this Part (i.e. Rule 305) is performed. Accordingly, the Board has consistently held that the site must have been in operation after July 27, 1973, the effective date of the Chapter 7 regulations. EPA v. Alex Chesney, PCB 76-40, 23 PCB 31; EPA v. Palmer, PCB 76-81, 22 PCB 165. In this matter, the Complaint alleges that the disposal site was closed before Respondent acquired ownership which makes Rule 305(c) inapplicable to Respondent.

In view of the foregoing, the Motion to Dismiss Humblewit Farms, Inc. will be granted.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Order was adopted on the 15th day of September, 1977 by a vote of 5-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board

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