

ILLINOIS POLLUTION CONTROL BOARD
May 12, 1977

ENVIRONMENTAL PROTECTION AGENCY,)	
)	
Complainant,)	
)	
v.)	PCB 76-292
)	
CHARLES JANSON, d/b/a BARTONVILLE)	
DISPOSAL,)	
)	
Respondent.)	

Mr. John Van Vranken, Assistant Attorney General, appeared for the complainant.
Mr. John E. Cassidy and Mr. Richard D. Price, Jr. appeared for the respondent.

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

This matter comes before the Pollution Control Board (Board) upon a complaint by the Environmental Protection Agency (Agency) filed on November 12, 1976. The complaint alleges that Respondent operates or causes to be operated a solid waste management site located in Section 13, Township 8 North, Range 7 East of the Fourth Principal Meridian in Peoria County, Illinois. The complaint alleges ten counts of violations of the Board's Solid Waste Rules and Regulations (Regulations) and the Environmental Protection Act (Act) including Rule 202(b)(1) and Section 21(e) of the Act; Rule 303(a) and Sections 21(a) and 21(b) of the Act; Rule 303(b) and Sections 21(a) and 21(b) of the Act; Rule 305(a) and Section 21(a) of the Act; Rule 305(b) and Sections 21(a) and 21(b) of the Act; Rule 305(c) and Sections 21(a) and 21(b) of the Act; Rule 314(e) and Sections 21(a) and 21(b) of the Act; Rule 314(f) and Sections 21(a) and 21(b) of the Act; Rule 313 and Sections 21(a) and 21(b) of the Act; and Rule 311 and Sections 9(c), 21(a) and 21(b) of the Act.

A hearing was held in this matter on January 26, 1977. At the hearing Respondent's attorneys entered an appearance for the purpose of objecting to the jurisdiction of the Board in this matter. Other than this objection Respondent did not participate in the hearing process. Respondent's objection is based on the claim that the Circuit Court of

Peoria County has jurisdiction in this cause. The case now on remand from the Illinois Supreme Court is based upon an amended complaint filed by the Attorney General alleging Respondent's failure to comply with his Development Permit for his landfill and also concerns itself with Respondent's failure to pay a \$5,000 penalty imposed by the Circuit Court on May 21, 1971.

In the case before the Board the Attorney General represents the Agency; however, the Agency is the complainant. The allegations before the Board are specific counts of violations of Board regulations and the Act. The parties and issues are different in each case. The Board finds that it does have jurisdiction in this matter.

Three Agency employees testified concerning their visitations to the site during the period of time from July 1, 1974 through September 20, 1976. Refuse, including household-type garbage and demolition material, brick, concrete and wood was observed on the site (R. 15). The same refuse was observed at the same areas on several occasions (R. 18, 21). On July 2, 1974 dead rats were on the railroad track west of the property (R. 18). Refuse was also in the stream beside the site (R. 18). On July 29, 1975 a large area of old refuse was observed; also refuse was observed on the bank of a small unnamed creek that is a tributary to Kickapoo Creek (R. 34). On September 23, 1976 smoke was observed emanating from a portion of the site (R. 45). On September 24, 1976 the smoke had lessened but still existed (R. 47). Exposed refuse was observed in several different portions of the site (R. 42, 45). Mr. Janson does not have a permit for this site (R. 48).

Four citizen witnesses also testified. Mr. Gale Schisler, a State Representative, stated he had received complaints from his constituency (R. 65). Mr. Schisler also stated that smoke hangs over the valley like a blanket (R. 65). Mr. John Hight stated that Respondent had been pushing lumber and brick into Kickapoo Creek, which forces the creek over onto his own property (R. 67, 68). Mr. Hight estimates that over the years at one point the creek has moved thirty (30) feet (R. 68). Mr. Hight stated Respondent covers the new garbage with old; "he pushes it around and wears it out" (R. 68, 69). Mr. Hight also complained about the smoke and the fact that Pleasant Hill Grade School is in the proximity (R. 68). Mr. Kenneth Dahlstrom also testified. Mr. Dahlstrom did not feel Mr. Janson's dump is in as bad condition as the National Disposal Dump which is downstream on Kickapoo Creek (R. 75, 77).

There is sufficient evidence to find Mr. Janson does not have an operating permit for a solid waste management site; he has failed to deposit all the refuse or garbage into the toe of the fill or into the bottom of the trench; he has failed to spread and compact the refuse into cells as rapidly as it was deposited; he has failed to apply daily, intermediate or final cover to areas promptly and as appropriate; he has failed to take adequate measures to monitor or control leachate; and he has failed to control vectors. Such an absence of good operating procedures provides a high probability of leachate flow into the creeks around the property which is clearly a threat of water pollution as in Rule 313 of the Regulations. The Board finds Respondent in violation of all the Regulations and Sections of the Act as alleged in the complaint.

Prior to its final determination the Board must consider the facts of Section 33(c) of the Act. In this case this is difficult because the Respondent did not participate at the hearing and it is Respondent's burden to provide the 33(c) information, Processing and Books, Inc. v. Pollution Control Board, 64 Ill. 2d 68, 351 N.E. 2d, 865 (1976). The Board will consider what information it has. An unnamed tributary to Kickapoo Creek and Kickapoo Creek both border the site (R. 34, 62). On one side is a country road with businesses located on it (R. 62). These businesses are approximately two hundred yards away (R. 62). The nearest residence is approximately one hundred yards away (R. 62). The site has apparently been there for at least twenty years (R. 74). Although the site has longevity its position adjacent to two creeks increases the potential for water pollution. The site does not appear to be a particularly good choice for a landfill.

The general welfare of Mr. Janson's neighbors has been greatly injured. The neighbors have had to put up with smoke and smells (R. 72) which evidently even reach a grade school (R. 72). One neighbor claims to have lost property from Respondent's diversion of the creek (R. 67, 68).

A properly run landfill is definitely of social and economic value; however, not much can be said for a poorly operated site.

The technological and economic feasibility of compliance is difficult to determine without more information. However, the Board will take official notice of the fact in numerous other cases solid waste management sites have come into

compliance, E.P.A. v. George D. Gilley, et al, PCB 75-401 (March 3, 1977), E.P.A. v. Harvey L. Wilhelms, PCB 76-19 (Nov. 10, 1976), E.P.A. v. D & N Trucking, Inc., et al, PCB 76-104 (Nov. 10, 1976).

Considering all factors the Board finds that a penalty is necessary in this case. The Board finds Respondent in violation of ten separate counts each with a possible \$10,000 civil penalty plus \$1,000 for each day of continued violation, which for some counts are noted to have occurred over a three year period. Because of the complexity of the violations, it is difficult to assign specific penalties for each count. Consequently, a penalty of \$6,000 is assessed to aid in 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. Charles Janson d/b/a Bartonville Disposal is found to be in violation of the following Solid Waste Regulations and Sections of the Environmental Protection Act: Rule 202(b)(1) and Section 21(e) of the Act; Rule 303(a) and Sections 21(a) and 21(b) of the Act; Rule 303(b) and Sections 21(a) and 21(b) of the Act; Rule 305(a) and Section 21(a) of the Act; Rule 305(b) and Sections 21(a) and 21(b) of the Act; Rule 305(c) and Sections 21(a) and 21(b) of the Act; Rule 314(e) and Sections 21(a) and 21(b) of the Act; Rule 314(f) and Sections 21(a) and 21(b) of the Act; Rule 313 and Sections 21(a) and 21(b) of the Act; and Rule 311 and Sections 9(c), 21(a) and 21(b) of the Act.
2. Respondent shall cease and desist all further violations of the Board's Regulations and the Act.
3. Respondent shall pay a penalty of \$6,000 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 12th day of May, 1977 by a vote of 6-0.

Christan L. Moffett
Christan L. Moffett, Clerk
Illinois Pollution Control Board