

ILLINOIS POLLUTION CONTROL BOARD  
October 28, 1976

ENVIRONMENTAL PROTECTION AGENCY, )  
)  
Complainant, )  
)  
v. ) PCB 74-404  
)  
MODERN UTILITIES, INC., )  
)  
Respondent. )

Mr. John VanVranken, Assistant Attorney General, appeared for the Complainant.  
Mr. John D. Bauman appeared for Respondent.

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

This matter comes before the Pollution Control Board (Board) upon a complaint filed October 29, 1974 by the Environmental Protection Agency (Agency). An Amended Complaint and a Second Amended Complaint were filed on December 10, 1974 and August 22, 1975 respectively. The Second Amended Complaint alleges that Modern Utilities, Inc. has operated a solid waste management site located in Section 31, Township 1 North, Range 8 West, St. Clair County, Illinois; that from on and at all times after July 27, 1974 up to and including the date of filing the Second Amended Complaint including but not limited to eighteen named dates Respondent operated a solid waste management site without a permit in violation of Section 21(e) of the Environmental Protection Act (Act) and Rule 202(b)(1) of the Chapter 7: Solid Waste Rules and Regulations (Regulations); that from on or about September 11, 1973 and continuing every day thereafter up to and including the date of filing of the Second Amended Complaint including but not limited to thirty-four named dates Respondent caused or allowed the open dumping of garbage in violation of Section 21(a) of the Act and the open dumping of refuse in violation of Section 21(b) of the Act; that on twenty named dates since September 11, 1973 Respondent failed to spread and compact refuse as rapidly as it was deposited in the site in violation of Rule 303(b) of the Regulations; that on October 23, 1974, March 5, 1975 and May 19, 1975 Respondent failed to provide sufficient personnel and supervision at the site to ensure that operations complied with the Act and Solid Waste Regulations in violation of Rule 304 of the Regulations; that from on or about September 9, 1973 and continuing every day thereafter, up to and including the date of filing of this

Second Amended Complaint Respondent failed to place a compacted layer of at least six inches of suitable material on all exposed refuse at the end of each day of operation in violation of Rule 305(a) of the Regulations; that from on or about September 11, 1973 and continuing every day thereafter, up to and including the date of filing of this Second Amended Complaint including but not limited to twenty-nine named dates, Respondent failed to place intermediate cover in accordance with Rule 305(b) and thus in violation of Rule 305(b) of the Regulations; that on five dates from January 4, 1974 to April 9, 1974 Respondent failed to place final cover on the final lift in violation of Rule 305(c) of the Regulations; that on October 16, 1973 and October 17, 1973 Respondent caused or allowed scavenging operations at its site in violation of Rule 308 of the Regulations; that on or about six named dates, Respondent accepted hazardous wastes without having received a permit to do so from the Agency in violation of Rule 310(b) of the Regulations; that on October 16, 1973 and October 17, 1973 Respondent failed to maintain roads adequate to allow orderly operations within the site in violation of Rule 314(b) of the Regulations; that on six dates from October 16, 1973 to May 19, 1975 Respondent failed to provide adequate fencing, gates or other measures to control access to the site, in violation of Rule 314(c) of the Regulations; that on seven dates from February 13, 1974 to May 19, 1975 Respondent failed to take adequate measures to monitor and control leachate in violation of Rule 314(e); and that on five dates, from February 14, 1974 to May 16, 1975, Respondent failed to take adequate measures to control vectors in violation of Rule 314(f) of the Regulations.

The Agency filed a Request for Admission of Facts (Comp. Ex. 1). In its reply Respondent admitted that Modern Utilities does not have a permit for a solid waste management site issued by the Agency (Comp. Ex. 1). Respondent also admitted the site in question was operated from prior to July 27, 1974 to May 29, 1975 by Respondent (Comp. Ex. 1). Also submitted into evidence was a Request for Admission of Genuineness of Documents (Comp. Ex. 2). These documents consist of eighteen letters to Respondent stating conditions present at the site which would constitute violations and one letter of acknowledgment from Respondent. Respondent did not respond to the Request for Admission of Genuineness of Documents. Under Procedural Rule 314(c) each document of which admission is requested is admitted unless a response is made. As no response was made the documents are admitted as genuine.

A hearing in this matter was held on June 14, 1976 in Belleville, Illinois. At the hearing it was established that Modern Utilities leases the site in question from Joseph Guertterman (R. 25). The landfill operation has gone on at the present site since 1965 (R. 26). The site is approximately ninety (90) acres with approximately thirty (30) acres currently in use (R. 34). The site receives approximately five hundred cubic yards of solid waste per day (R. 27). Modern Utilities owns and operates a refuse collection business of its own (R. 28). This business plus three other sanitation services use the solid waste management site (R. 28).

Inspections of this site were made during the period covered by the complaint by two Agency employees, Kenneth Gene Mensing and Patrick McCarthy, both of whom testified at the hearing. Mr. Mensing inspected the site on September 11, 1973 (R. 44). During this inspection Mr. Mensing observed that the operator was not at the site but at a site immediately to the north (R. 44). He further observed two old areas of refuse that weren't properly spread and compacted some distance from the active dumping area that day (R. 44). An area of the landfill had intermediate cover that was not satisfactory; there was exposed and protruding refuse (R. 44). On his inspection report of that day Mr. Mensing noted observing openly dumped garbage and refuse, refuse standing in water, flies, a need for site policing and portable fencing, and that dumping was not confined to the smallest possible area (Comp. Ex. 3). On the next day September 12, 1973, Mr. Mensing returned to the site and observed basically the same conditions; however there was an operator on the site (R. 46, 47). There are two operators for the site, Ray Guertterman and James Guertterman (R. 21). Ray Guertterman is the main operator and has had part-time help for the past five years (R. 21). The operator, Ray Guertterman, stated that the area at the back of the site had been dumped several days before and that he just hadn't gotten around to covering the site (R. 47). Several areas of the site remained uncovered from one inspection to another (R. 55, 58, 143). An area uncovered on December 13, 1973 remained uncovered and enlarged on January 4, 1974 (R. 55). On March 18, 1974 an area was still uncovered from January 4, 1974 (R. 58). Agency witness McCarthy observed the same area uncovered on November 26, 1974 and on December 30, 1974 (R. 143). On September 27, 1974 corn and watermelon type plants were observed growing among the old refuse (R. 79). These same general conditions were observed throughout all the inspections.

On June 25, 1974 sewage sludge was observed at the site (R. 62). The sludge was also observed on March 18, 1974, June 26, 1974, July 29, 1974 and May 16, 1975 (R. 58, 64, 70, 94). On June 26, 1974, May 16, 1975 and May 19, 1975 a large fly population was observed at the site (R. 64, 94, 99). Mr. Guertterman, the operator, stated there were no more rodents or crows or scavenging animals on the site than at an old barnyard (R. 12).

On October 16, 1974, October 23, 1974 and May 19, 1975 an Agency inspector arrived at the site prior to the operator and on these occasions dumping was already taking place (R. 136, 142, 99). On May 19, 1976 the site was not restricted; fencing or gates had not been put up along the road (R. 99). A black top road, Mine Haulage Road, runs parallel to the site but no one claims it or takes care of it (R. 16). The access to the site is a dirt road (R. 16). Respondent's operator stated that the site is accessible at some point during all types of weather and that the road is large enough for two vehicles to pass (R. 16, 17). Mr. McCarthy stated the road was a one-lane dirt road upon which two trucks could not pass at the same time (R. 138). The inspection reports of September 11, 1973 and September 12, 1973 show the access road as unsatisfactory, being a "narrow unsmooth" dirt road (Comp. Ex. 3, 4). The later inspection reports indicate a satisfactory road.

Leachate has been observed at the site on February 27, 1975 and May 16, 1975 (R. 92, 94, 144). On February 27, 1975 the leachate was emanating from an old fill area and ponding in low areas and depressions (R. 92). On May 16, 1975 the site was leaching to a greater extent than the earlier date; the leachate was flowing or trickling into a pond on the east edge of the site (R. 94, 95).

The Board finds that the Agency presented sufficient evidence to find Respondent in violation on all but two of the fourteen paragraphs of alleged violations. No evidence was presented that any scavenging took place on the site as alleged in Paragraph 11. Paragraph 13 alleges Respondent failed to maintain adequate roads for orderly operation of the site. Although there are indications of possible inadequacies in the record, not enough information was presented to allow the Board to determine what is sufficient to be an "adequate" road. Therefore, the allegations of Paragraphs 11 and 13 are dismissed. Respondents are found to be in violation of all Rules and Regulations and Sections of the Act as alleged in the remaining paragraphs of the complaint.

Before the Board determines what penalty and/or remedy is appropriate the Board must consider the factors of Section 33(c) of the Act. These include the character and degree of injury to the public, social and economic value of the site, suitability of the site location and technical and economical reasonableness of compliance. The landfill in violation of so many standards could do great damage to the public health and welfare. The potential is for water pollution from the flowing leachate and the dissemination of disease by vectors such as flies and rodents. A properly run landfill follows procedures designed to prevent the possible dangers. This is the purpose of the permit system; to protect the public by preventing violations and injury before they occur.

The landfill in question is a definite social and economic value. Modern Utilities sanitation service, exclusive of the other users of the landfill, serve directly or indirectly about 22,000 residents and approximately eleven to twelve hundred business establishments (R. 29, 30). Of the private collectors in the area Modern Utilities have about seventy-five percent of the market in the area (R. 30). In addition there are three other sanitation businesses which use the site (R. 28).

The site is an old strip mine in a farming area (R. 8, 18). There is cover material available on the site itself.

Mr. Hecht, the president and general manager of Modern Utilities, stated that there had been difficulty in keeping the equipment in proper repair and in keeping people from breaking into the site (R. 31, 33). Mr. Hecht stated that economically and technologically the business would not have difficulty keeping someone at the site when it is open or complying with the other regulations (R. 32, 33). The net profit of Respondent for a period ending February 28, 1974 was \$9,678.86 and for a period ending February 28, 1975 it was \$28,654.27 (R. 25). For the period ending February 29, 1976 Respondent had a loss of \$336.62 (R. 25).

Modern Utilities did apply for a permit in November 1974 (R. 165, 166). Mr. Leo Germain, a civil engineer and land surveyor, provided the information for the permit application (R. 163, 164). Mr. Germain testified that all the physical aspects of the site were acceptable for a landfill (R. 165). It is Mr. Germain's understanding the permit was denied because of inadequate "housekeeping," the monitor well must be back-filled to prevent surface ground water contamination, inadequate daily cover, and the site is not being dumped according to approved plans (R. 168, 169).

The Board finds the evidence in this case presents a picture of ongoing failure to comply with the regulations. Respondent has compiled a lengthy list of violations. This is extremely unfortunate in the fact that apparently the site is in a good location and serves the needs of a large number of residents and businesses in the area. Respondent's president stated that Respondent has the technical and economic ability to comply with the Solid Waste Regulations and the Act. On these facts the Board finds a penalty of \$1500 necessary to aid the enforcement of the Act. Respondent will also be required to cease and desist further violations and to obtain the necessary permit within sixty (60) days of this Order.

This opinion constitutes the Board's findings of fact and conclusions of law.

ORDER

It is the Order of the Pollution Control Board that:

1. Modern Utilities, Inc. is found to be in violation of Rule 202(b)(1) of the Solid Waste Regulations and Section 21(e) of the Environmental Protection Act, Section 21(a) of the Act, Section 21(b) of the Act, Rules 303(b), 304, 305(a), 305(b), 305(c), 310(b), 314(c), 314(e) and 314(f) of the Solid Waste Regulations.
2. The allegations of violations of Rules 308 and 314(b) of the Regulations are dismissed.
3. Respondent shall immediately cease and desist further violations and shall obtain the proper Agency permit within 60 days.
4. Respondent shall pay a penalty of \$1500 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

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 28<sup>th</sup> day of October, 1976 by a vote of 5-0.

  
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Christan L. Moffett, Clerk  
Illinois Pollution Control Board