

ILLINOIS POLLUTION CONTROL BOARD
August 5, 1976

ENVIRONMENTAL PROTECTION AGENCY,)
)
 Complainant,)
)
 v.) PCB 75-179
)
)
 CITY OF CARBONDALE,)
)
 Respondent.)

MR. JOHN VanVRANKEN, Assistant Attorney General, appeared on behalf of the Complainant;
MR. JOHN WOMICK, City Attorney, appeared on behalf of Respondent;

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

This matter comes before the Board on a Complaint filed by the Attorney General on behalf of the Environmental Protection Agency (Agency) on April 29, 1975 against the City of Carbondale (City) Jackson County, Illinois. The Complaint alleges that the City violated Section 21(e) of the Act and Rules 201 and 202(a) of the Board's Solid Waste Regulations by developing and operating a solid waste management site without the required permits. A hearing was held in Carbondale on April 28, 1976.

The Board finds that Complainant has failed to prove the essential elements of the alleged violations. Complainant has failed to show that a landfill exists which the City developed, owned, operated or otherwise controlled, without a permit. The Board does not find the inability of Complainant's witnesses to give the exact legal description of the site they inspected to be a fatal variance between the proof and the allegations of the Complaint. However, Complainant does have the burden of proving that the City violated the Regulations and the Act. Yet, from the evidence presented, it is impossible to determine whether witnesses Hatfield and Samuel were even testifying about the same site. Mr. Samuel could not even vouch for the accuracy of his inspection reports (R. 84, 141, 142).

Complainant has woefully failed in its burden of proof under Section 31(c) of the Act. The Board must dismiss this cause.

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

ORDER

The Complaint in this matter is hereby dismissed.

IT IS SO ORDERED.

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



Christan L. Moffett, Clerk
Illinois Pollution Control Board