

ILLINOIS POLLUTION CONTROL BOARD
September 30, 1976

ENVIRONMENTAL PROTECTION AGENCY,)
)
) Complainant,)
)
) v.) PCB 76-21
)
JOHN P. WYATT,)
)
) Respondent.)

Mr. Robert Reiland and Mr. Russell R. Eggert, Assistant Attorneys General, appeared on behalf of the Complainant. Mr. W. Loren Thomson appeared on behalf of the Respondent.

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

This matter comes before the Pollution Control Board upon a complaint filed by the Environmental Protection Agency (Agency) on January 21, 1976. An amended complaint was filed on April 20, 1976. The amended complaint alleges that John P. Wyatt owns and has operated a solid waste disposal site in Section 32, Township 24 North, Range 2 East of the Third Principal Meridian, in McLean County, Illinois. The amended complaint further alleged that Respondent failed to place a compacted layer of not less than two feet of cover over the entire surface of the final lifts of the solid waste disposal site within sixty days following the placement of refuse in said final lifts and that as of the date of the complaint refuse and debris remains exposed at the site in violation of Rule 305(c) of the Solid Waste Regulations and Section 21(b) of the Environmental Protection Act (Act). A hearing was held on June 10, 1976 at Bloomington, Illinois.

The Agency presented testimony concerning eleven inspections of the site from January 26, 1974 through May 19, 1976. At the first inspection Mr. Wyatt stated that the operation was nearing completion, that he would probably finish it by filling it with soil and that he had sold it to the City of Bloomington and was operating it for the City of Bloomington (R. 14, 15). On August 12, 1974 exposed refuse consisting of demolition-type material, for example: wood, brick, steel and reinforcing rods was observed (R. 77). On this date Mr. Wyatt told Agency inspector, Dave Lambert, the site was closed and

was not accepting any more refuse (R. 78). On the Agency visit of September 1, 1974 it was observed that the north face was open with refuse exposed; the west end of the property was exposed and central portions of the site lacked final cover (R. 23). On September 11, 1974 Mr. Wyatt discussed conditions with Agency inspector, John Diefenback (R. 24, 25). At this time there was some cover material piled on the site (R. 25). On October 2, 1974 refuse was protruding the cover material on the central portion of the site, the north face was open and the west end had open refuse (R. 30). In December of 1974 refuse was observed along the north portion of the boundary of the site adjacent to the fence line and approximately 60 to 80 feet parallel south of the fence line (R. 83). On November 19, 1975 conditions similar to the previous inspections were found. The north face was open; the west end was exposed and refuse was protruding through the cover material on centralized portions of the site (R. 32). This was also the general condition of the site on February 23, 1976 (R. 33). During the February 23, 1976 inspection Mr. Diefenback spoke with a man from the City of Bloomington who indicated the City of Bloomington had responsibility for the property in some respect, ownership or agreement to purchase (R. 34). On April 13, 1976 the north face was open as was the west end and refuse was protruding through the cover on central portions of the site (R. 38).

The Agency also presented pictures of the area as exhibits. Although work on the face of the fill was continuing the north face of the fill consistently remained exposed (Comp. Exs. 7, 8, 10, 12 and 13).

Respondent's case is concerned with the question of Respondent's property lines. The City of Bloomington does own property next to Mr. Wyatt's on the south (R. 145). The City also owns a lot south and east of Mr. Wyatt's property (R. 151, Comp. Ex. 1). Although the evidence of ownership presented is somewhat confusing and difficult to follow, the Board finds sufficient evidence was presented to show failure to place final cover within sixty days on the site, particularly along the north face of the fill and on the central areas.

Respondent also raised as a defense that the Solid Waste Regulations were enforced selectively and therefore unconstitutionally. Proof of this allegation consisted of pictures of other sites with uncovered refuse (Resp. Ex. 18-26).

This defense is without merit. Conscious exercise of some selectivity is not a constitutional violation, Oyler v. Boles 368 U.S. 448, 456 (1962). Respondent made no showing that prosecution was based on an unjustifiable standard such as race, religion or other arbitrary classification as is necessary to prove selective enforcement, Id.

The Board finds that Respondent has failed to place final cover within sixty days in violation of Rule 305(c) of the Solid Waste Regulation and Section 21(b) of the Act. Before the Board can fashion a remedy Section 33(c) of the Act must be considered. The possibility of the presence of leachate in this situation is not great (R. 63). The primary hazards at the site according to the Agency are fire hazard or vector harborage (R. 48). There is another refuse disposal site to the north of the Wyatt site (R. 48). There is also a residential neighborhood in the area (R. 48). The site located as it is next to a similar site may be located suitably; however, a solid waste site not covered properly can be a hazard to the residents of the area and perhaps an attractive but dangerous play area for children.

Respondent's exhibits 1 through 13 are pictures taken two days before the hearing indicating that most of the fill area has received enough cover to at least a depth where there is no protruding refuse (R. 156). The Agency estimate for covering all the area to attain compliance was that it could cost from approximately \$7,000 to \$13,000 or \$14,000. According to Respondent's Exhibits 1 through 13 at least part of this has been already accomplished. Respondent's income for 1973 was approximately \$23,000, in 1974 it was \$18,000 and in 1975 \$14,600 (Comp. Ex. 23, 24, 25). There was some cover material piled at the site (R. 24). Respondent's primary business was demolition and he employed an operator, truck driver, and laborer (R. 188). It would appear that the necessary equipment to complete the fill was readily available. Considering what Respondent has already done to comply with the regulations and what money and material was available at the time, there is no reason that Respondent could not have placed final cover in the proper period of time. Because no environmental harm was alleged and improvements were continuing, the Board finds that a penalty of \$500 is adequate to aid in the enforcement of the Act. Respondent shall also be required to complete adequate placement of final cover within 90 days of this Order.

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


ORDER

It is the order of the Pollution Control Board that:

1. Respondent is found to be in violation of Rule 305(c) of the Solid Waste Regulations and Section 21(b) of the Act.
2. Respondent shall complete placement of final cover within 90 days of this Order.
3. Respondent shall cease and desist further violations of the Act.
4. Respondent shall pay a penalty of \$500 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 20th day of September 1976 by a vote of 5-0.


Christan L. Moffett, Clerk
Illinois Pollution Control Board