

ILLINOIS POLLUTION CONTROL BOARD  
November 10, 1976

PEOPLE OF THE STATE OF ILLINOIS, )  
 )  
 Complainant, )  
 )  
 v. ) PCB 75-368  
 )  
 )  
 COMMONWEALTH EDISON COMPANY, )  
 an Illinois corporation, )  
 )  
 Respondent. )

Mr. Marvin I. Medley, Assistant Attorney General, appeared on behalf of Complainant;  
Mr. R. Rex Renfrow, III, Isham, Lincoln & Beale, appeared on behalf of Respondent.

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

This matter comes before the Board upon the Complaint of the People of the State of Illinois by William J. Scott, Attorney General of the State of Illinois (State) against Commonwealth Edison Company and Lincoln Stone Quarry, Incorporated, both Illinois corporations, and the First National Bank of Joliet as Trustee under Trust No. 724. The Complaint was filed before the Board on September 19, 1975. On November 24, 1975 the State filed an Amended Complaint which excluded Lincoln Stone Quarry, Incorporated, as Respondent. On December 18, 1975, Respondent First National Bank of Joliet was dismissed by Order of the Board in response to its Motion filed on December 3, 1975.

The subject of this action is a solid waste management site operated by Edison at a quarry located near the intersection of

Patterson and Brandon Roads, south of Joliet, Will County, Illinois. In its second Amended Complaint, the State alleges that Edison violated Rule 202(b)(1) of the Solid Waste Regulations, Chapter 7, Illinois Pollution Control Board Rules and Regulations, and Section 21(e) of the Environmental Protection Act (Act) since July 27, 1974, in that Edison caused or allowed refuse fly ash from the company's Joliet Station Power Plant to be deposited at the quarry site without first having obtained an operating permit from the Illinois Environmental Protection Agency (Agency). In Count II the State alleges Edison has violated Section 21(f) of the Act in that it disposed of its refuse fly ash at the aforementioned solid waste management site which does not meet the requirements of the Act or Regulations in that the site does not have a permit nor is proper cover provided for the refuse there deposited. A hearing was held in this matter on May 24, 1976 at which a proposed Stipulation of Fact was presented to the Board by both parties. The Board hereby accepts the proposed Stipulation of Fact.

The essential issue of this case is whether or not Edison is required by law to have a permit issued by the Agency for its solid waste disposal site. The Stipulation of Fact (Stipulation) filed June 10, 1976 indicates that Edison has been disposing of combustion by-products generated at its Joliet Station in a leased part of Lincoln Stone Quarry since approximately 1963. The combustion by-products disposed of in this quarry are non-putrescible substances consisting entirely of fly ash and bottom ash generated by burning coal at the Joliet generating station. These combustion by-products consist primarily of oxides of silicon, iron, and aluminum with a variety of oxides of other metals, particularly boron, in trace amounts. Nothing other than the combustion by-products generated at the Joliet Station are disposed of at the quarry site. Approximately 280,000 tons of the combustion by-products are deposited in the quarry every year by sluicing the material from the generating station with water pumped from the Des Plaines River. The deposits are either saturated with or covered by water at all times, the supernatant flowing by gravity to a sump area in the quarry where it is collected and pumped back into the River (Stip. Para. 18).

Pursuant to the Solid Waste Regulations promulgated by the Board on July 19, 1973, Edison proceeded to submit an application to the Agency for a permit to operate a solid waste disposal site at the Lincoln Quarry (Stip., Para. 21). Subsequent to the submission of the permit application by Edison, which was denied by the Agency pending receipt of further information, Edison and the Agency have been in constant communication concerning the permit application

with the result that, at the time of the Stipulation, Edison had at no time received a permit from the Agency to operate this site (Stip. Para. 22-36). In addition, Edison has never, at any time, provided daily cover other than the water as noted previously for the combustion by-products disposed of at the site (Stip. Para. 18 & 22).

On January 22, 1976, a decision was made by Edison and the Agency that a new application was in order due to the time that has elapsed since Edison's first application and the changes that occurred in the quarry in that time (Stip. Para. 37). Additional testing has been done by Edison on the site including a continuous well monitoring program. (Stip. Para. 39 & 40). In addition, Edison has proposed a plan to the Agency to replace its fly ash sluicing system with a dry collection system. When this is accomplished, Edison proposes to dispose of the fly ash at the Joliet Station either as a commercial substance or a dry waste product at some other location. It is proposed that this system would be completed in early 1979. (Stip. Para. 41). On September 14, 1976, Edison filed with the Board a copy of a permit received by Edison on September 9, 1976 from the Agency for the Lincoln Stone Quarry site.

The central issue of this case is whether or not Edison is required to have a permit for its solid waste disposal site at the quarry. Edison has contended throughout this case that since the refuse disposed of at Lincoln Quarry is generated by its own activities, it is not required to obtain a permit by virtue of the exemption clause contained in Section 21(e) of the Environmental Protection Act (Act). Section 21(e) of the Act states in pertinent part that no person shall:

conduct any refuse collection or refuse disposal operations except for refuse generated by the operators own activities without a permit granted by the Agency...

The Board in response to a Motion to Dismiss has rejected Edison's exemption argument citing EPA v. City of Pontiac, PCB 74-396, 18 PCB 303, 306 (August 7, 1975). People of the State of Illinois v. Lincoln Stone Quarry, Inc., et al., PCB 75-368 Interim Opinion and Order, November 6, 1975. In Pontiac the Board set forth its interpretation of the exemption provision contained in Section 21(e) of the Act stating that:

[s]ection 21(e) and its exemption must be interpreted consistently with the purposes of the Act. Title V,

Section 20 states this purpose to be prevention of pollution or misuse of land arising out of improper refuse disposal. To achieve this end the Regulations establish a permit system controlling refuse-disposal activities. The intent of Section 21(e) was to exempt minor amounts of refuse which could be disposed of without environmental harm on the site where it was generated. There was no intent to create a gap in the permit system of the magnitude suggested by Pontiac. To interpret the exemption as allowing the municipality to dispose of any refuse it owns without a permit will mean that large quantities of varied materials could be indiscriminately deposited at a waste-disposal site. This obviously circumvents both the permit system and the purposes of the Act. Id. at 306.

Edison argues that the Board's interpretation of 21(e) is inconsistent the plain words of the Act, arose in a different factual context, and ignores the rules of statutory construction.

Edison complains the exemption language contained in Section 21(e) is clear and unambiguous in that it obviously means what Edison says it means. The Board reaffirms its position in Pontiac that the intent of Section 21(e) was to exempt minor amounts of refuse which could be disposed of without environmental harm on the site where it was generated. Edison cites an amendment to Section 21(e) which was adopted by the Illinois Legislature after the Pontiac decision was issued and contends that the Legislature thereby implicitly rejected the Board's interpretation that only operators disposing of small quantities of non-environmentally harmful waste were exempt from the permit requirements of Section 21(e).

The 1975 amendment to Section 21(e) of the Act states as follows:

The above exception shall not apply to any hazardous refuse except that the exception shall apply to any person engaged in agricultural activity who is disposing of a substance which would normally be classified as hazardous if the substance was acquired for use by that person on his own property. For the purpose of this Section "hazardous refuse" shall mean refuse with inherent properties which make such refuse difficult or

dangerous to manage by normal means including but not limited to chemicals, explosives, pathological wastes, and wastes likely to cause fire.

As Edison stated in its brief, the Pontiac Opinion was before the Legislature when the amendment to 21(e) was executed. If indeed the Legislature did find the Board's interpretation incorrect, it would have been a simple matter to give us direction in the amendment. Instead the Legislature went beyond Pontiac and stated that even small amounts of refuse could not meet the exception should they be of a hazardous nature, a commonly accepted designation for particularly dangerous pollutants. The only exception to this Rule is a person engaged in agricultural activity, a farmer, who is utilizing possibly hazardous chemicals necessarily added to his land in order to produce an effective crop yield. The Board notes that a farm operation is normally a small operation using relatively small amounts of chemicals. In addition, the Legislature defined hazardous refuse for the purpose of the Section using as examples chemicals, explosives, pathological wastes and waste likely to cause fire. The Board notes that all of these examples are illustrative of wastes not likely to be found in gross quantities.

For the above reasons the Board finds that Edison's disposal of some 280,000 tons of material per year utilizing some 8,000 gallons per minute of water as a carrier, is a proper subject for a permit evaluation by the Agency charged with the duty to prevent the pollution and misuse of land. Since Edison does not come within the exception under 21(e) it follows that it was necessary for Edison to acquire an Agency permit for the landfill operation. The Board, therefore, finds Edison in violation of Rule 202(b)(1) of the Regulations and Section 21(e) of the Act in that it is operating its facility without a permit.

Count II of the Complaint, which alleges Edison has violated the Board's substantive cover rules and has operated without a permit and is therefore in violation of Section 21(f) of the Act, presents some interesting issues. Having found Edison in violation of 21(e) of the Act in that it is operating without a permit, the Board can find no useful purpose in finding Edison in violation of a different part of the same Section for the same reason. With regard to the cover rules, the Stipulation does not address this issue sufficiently for the Board to make an intelligent decision. Certainly under these unusual conditions, i.e., sluicing a relatively solid material into an area where it stands under water or at least saturated for some time, the permit would have addressed this question, and a reasonable interpretation of daily and intermediate cover would have ensued. The question that

comes immediately to mind is whether the water or the material itself constituted an adequate daily cover. The Stipulation indicates that the final cover was probably adequate, but again the facts in the Stipulation are lacking. The Board will therefore dismiss Count II of the Complaint.

The Stipulation and the Exhibits indicate that Edison, notwithstanding its contention that a permit was not necessary, did indeed make a good faith effort to acquire a permit from the Agency. Efforts were made to insure the lack of environmental harm to the surrounding ground water, test wells were driven and tests conducted, the results of which indicate no apparent environmental damage has occurred. Indeed, as of September 1, 1976, Edison has been granted a permit to develop the disposal site at Lincoln Stone Quarry. Considering the lack of environmental harm, the cooperation shown the Agency by Edison, and the subsequent issuance of a permit by the Agency to Edison, the Board finds that a penalty in this case would achieve nothing in furtherance of the objectives of the Act.

This Opinion constitutes the finding of facts and conclusions of law by the Board in this matter.

ORDER

It is the Order of the Pollution Control Board that:

1. Commonwealth Edison Company is found in violation of Rule 202(b)(1) of the Solid Waste Regulations and Section 21(e) of the Environmental Protection Act in that it operated a solid waste management site without an operating permit issued by the Illinois Environmental Protection Agency.
2. Count II of the Complaint is hereby dismissed.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 10<sup>th</sup> day of November, 1976 by a vote of 5-0.

  
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Christan L. Moffett, Clerk  
Illinois Pollution Control Board