

ILLINOIS POLLUTION CONTROL BOARD  
June 18, 1976

ENVIRONMENTAL PROTECTION AGENCY, )  
 )  
 Complainant, )  
 )  
 v. ) PCB 76-81  
 )  
 ERNEST PALMER, )  
 )  
 Respondent. )

Mr. George W. Tinkham, Assistant Attorney General, appeared on behalf of Complainant.  
Mr. Craig Millman, Land of Lincoln Legal Assistance Foundation, appeared on behalf of Respondent.

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

This matter comes before the Pollution Control Board (Board) upon the March 24, 1976 Complaint of the Environmental Protection Agency (Agency) charging Ernest Palmer with failure to apply final cover to and file a plat of his Pulaski County landfill. The three count Complaint alleges that Respondent owned and operated a 250 square yard solid waste disposal site until January 10, 1973, at which time he ceased depositing refuse. Complainant alleges and Respondent admits that Palmer has not applied final cover as required by Rule 5.07(b) of the Public Health Regulations and Section 21(b) of the Act. Complainant also alleges violation of Rule 305(c) and 318(c) of the Board's Solid Waste Regulations in Counts II and III respectively.

Rule 102 of the Board's Solid Waste Regulations provides:

Rule 102: Repeals.

These rules and regulations replace and supersede Rules

and Regulations for Refuse Disposal Sites and Facilities, adopted by the Illinois Department of Public Health on March 22, 1966 and continuing in effect pursuant to Section 49(c) of the Environmental Protection Act "until repealed, amended or superseded by regulations under this Act," except that any proceeding arising from any occurrence happening prior to the applicable provision of these rules and regulations shall be governed by the above described Rules.

It is apparent that the Acts complained of, herein, occurred prior to the applicable provision of these rules and are therefore governed by the Rules and Regulations of the Illinois Department of Public Health. Therefore Counts II and III alleging violation of the Board's Regulations must be dismissed.

At the May 14, 1976 hearing it was ascertained that Mr. Palmer purchased the property for \$120.00 in back taxes in February, 1972 (R.29). The purchase was motivated by Mr. Palmer's desire to provide his sons with sufficient funds to provide for his burial (R.30). As soon as Mr. Palmer learned that his dump violated the Act and our Regulations, he ceased depositing refuse there (R.30). In the summer of 1973 Mr. Palmer erected a fence to stop unauthorized dumping at the site (R.32).

The site is located approximately one mile outside of Pulaski, Illinois (R.42). It contains various kinds of refuse as well as several cars, an old truck bed, and 2 ice boxes. It is ten feet deep at the point of greatest depth (R.36, Resp. Ex. 3).

Mr. Palmer is 64 years of age and in poor health. Three years ago he was hospitalized for cancer. In addition he has a heart condition and arthritis. His hospitalization resulted in a \$3537.92 lien against the property owned by Mr. Palmer (R.22, 47). Respondent's income is approximately \$177.00 per month (R.24). He owns a pickup truck and several goats, chickens, ponies and one cow (R.24-25). He would have covered the site as fill is present at the site, however he cannot afford the \$200.00 it would cost to do so (R.16, 17, 27). In fact, Mr. Palmer did apply some cover material in 1973 (R.37-8). Mr. Palmer has stipulated that the maximum money he could put aside to pay for the covering of the site would be \$10.00 per month (R.45).

The Board finds that Mr. Palmer has failed to apply final cover as required by the Illinois Department of Public Health's Rules and Regulations for Refuse Disposal Sites and Facilities and Section 21(b) of the Environmental Protection Act.

Mr. Palmer and the Complainant have sought assistance from various agencies to obtain either funds or persons to apply final cover (R.50-54). Mr. Palmer stipulates that he will continue to do so (R.54). In view of Mr. Palmer's financial position and good faith efforts to provide cover the Board finds that no penalty is appropriate. The Board notes that the cost of this proceeding grossly exceeded the apparent cost of compliance.


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

ORDER

It is the Order of the Board that:

- 1) Counts II and III of the Complaint herein be and are, hereby, dismissed.
- 2) Mr. Ernest Palmer is found to have violated Rule 5.07(b) of the Public Health Regulations and Section 21(b) of the Act.
- 3) Respondent shall continue to seek aid from the Agencies described in the record in order to provide final cover for the site.

I, Christan L. Moffett, Clerk of the Pollution Control Board hereby, certify the above Opinion and Order were adopted on the 18<sup>th</sup> day of June, 1976 by a vote of 5-0.

  
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Christan L. Moffett, Clerk  
Illinois Pollution Control Board