

ILLINOIS POLLUTION CONTROL BOARD  
February 17, 1977

ENVIRONMENTAL PROTECTION AGENCY, )  
OF THE STATE OF ILLINOIS, )  
 )  
Complainant, )  
 )  
 )  
v. ) PCB 75-490  
 )  
 )  
VILLAGE OF ITASCA, )  
a municipal corporation, )  
 )  
Respondent. )

Mr. James L. Dobrovoly, Attorney General of the State of Illinois appeared on behalf of the Complainant;  
Mr. Joseph M. Dvorak, III, of Traeger and Traeger, appeared on behalf of the Respondent.

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

This matter is before the Board upon a Complaint by the Illinois Environmental Protection Agency (Agency) against the Village of Itasca (Itasca) concerning a refuse disposal site located on Highway 53, north of U.S. Route 20 and south of Highway 19, in the County of DuPage, Illinois. Hearing was held in this matter on July 30, 1976. No public comment has been received by the Board.

At the hearing both parties presented a proposed stipulation and settlement agreement which was finalized and filed before the Board January 24, 1977. Since this stipulation and proposal for settlement contains a paragraph purporting to be an agreement by and between the parties that there shall be no penalty assessed for the violations listed in the stipulation, the Board will reject the stipulation as an infringement upon the Board's powers. At the hearing, however, Mr. Dvorak, attorney for the Respondent, stated on page 6 that "our only defense is that which is stated in stipulation, which was stated in our answer; that we did not have (to) file or obtain a

permit on the basis of a statutory exemption under Chapter 111 1/2 Section 21(b) and 21(e) which is referred to in Rule 202(b)(1)." In Respondent's answer to the Complaint filed January 19, 1976 Respondent admits it conducts a refuse disposal operation at the site as alleged. Respondent claims as its affirmative defense that since its operation at the site consists of disposing of refuse generated by its own activities (sludge from its sewage treatment plant), it is within the statutory exemption provided in Section 21(e) of the Act and referred to in Rule 202(b)(1) of the Solid Waste Regulations.

The Complaint alleges that Itasca has operated a refuse site at the aforementioned location without an operating permit in violation of Rule 202(b) of the Regulations, Section 21(b) and 21(e) of the Act. The Board will dismiss the allegation of violation of 21(b) of the Act as against stated Board policy in actions of this type, Environmental Protection Agency v. Krenz Trucking, Incorporated, 16 PCB 439 (1975). With regard to the other allegations, however, the Board has rejected Itasca's affirmative defense in EPA v. City of Pontiac, PCB 74-396, 18 PCB 303, 306 (1975) and People of the State of Illinois v. Commonwealth Edison Company, PCB 75-368 (1976).

The Board therefore finds Itasca in violation of Rule 202(b) of the Regulations and Section 21(e) of the Act. The Board finds the damage to the environment to be de minimus and the failure of Itasca to acquire a permit a matter of misunderstanding, and will, therefore, assess no penalty in this case. Itasca will, however, be ordered to cease and desist operation of the landfill unless and until it acquires a suitable permit from the Agency.

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

#### ORDER

It is the Order of the Pollution Control Board that:

1. Village of Itasca is in violation of Rule 202(b) of the Solid Waste Regulations and Section 21(e) of the Environmental Protection Act.
2. The allegation of violation of Section 21(b) of the Act is dismissed.

3. The Village of Itasca shall cease and desist operation of its refuse disposal site unless and until it acquires a suitable permit from the Illinois Environmental Protection Agency.

Mr. Dumelle concurs.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 17<sup>th</sup> day of February, 1977 by a vote of 4-0.

Christan L. Moffett *ck*  
Christan L. Moffett, Clerk  
Illinois Pollution Control Board