

ILLINOIS POLLUTION CONTROL BOARD  
February 11, 1976

ENVIRONMENTAL PROTECTION AGENCY,        )  
  )  
  Complainant,        )  
  )  
  v.                        )        PCB 75-357  
  )  
JOHN W. HELMS,                                )  
  )  
  Respondent.            )

Ms. Mary C. Schlott, Assistant Attorney General, Attorney for  
Complainant  
Mr. John W. Helms, Pro Se

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

This case arises out of a Complaint filed by the Environmental Protection Agency (Agency) on September 11, 1975, alleging that Respondent Helms has operated from July 27, 1974 until the date of the filing of the Complaint a solid waste management site in Lee County without an operating permit issued by the Agency in violation of Rule 202(b)(1) of the Board's Solid Waste Regulations (Regulations) and in violation of Section 21(b) and Section 21(e) of the Environmental Protection Act (Act). Hearing was held on December 3, 1975, in Ashton, Illinois, at which time a Stipulation and Proposal for Settlement (Stipulation) was entered into by the parties.

Respondent Helms purchased said parcel of land, a former quarry, with the intention of filling said quarry so that it could be built upon later. The requirement for an operating permit was noted by the Agency in a series of ten letters sent to Respondent beginning August 20, 1973 through February 5, 1975. In a letter dated April 6, 1974, Respondent stated that he was attempting to limit materials dumped in the quarry to demolition debris with low pollutant properties. By return mail, the Agency sent Respondent a permit application to Develop and/or Operate a Solid Waste Management Site for Heterogeneous Construction and Demolition Wastes. The application was never filed with the Agency.

Respondent admits he has never applied for nor received any permits from the Agency for the operation of his refuse disposal site. Respondent further admits that the exhibits are a true and accurate representation of conditions at the site.

The Stipulation provides that Respondent shall pay \$100.00 as a penalty for the violations found to exist by the Board. It also provides that Respondent shall cease and desist from operating a refuse disposal site unless and until he has obtained either the requisite permit or has been granted a variance by the Board.

On the basis of the above facts and the Stipulation, which constitutes the entire record in this case, we find that Respondent Helms did violate Rule 202(b)(1) of the Regulations and Section 21(e) of the Act from July 27, 1974 until September 11, 1975, in the operation of his refuse disposal site. We further find that the stipulated settlement of \$100.00 constitutes a reasonable penalty for these violations.

That portion of the Complaint alleging violation of Section 21(b) must be dismissed. Section 21(b) reads:

(No person shall) Cause or allow the open dumping of any other refuse in violation of regulations adopted by the Board.  
[Emphasis added.]

Thus, an indispensable element of a charge alleging violation of Section 21(b) is the element setting forth the specific regulation allegedly violated. This regulation must relate to the manner or method in which the disposal site is operated. Since no regulatory violations were alleged in the charge excepting the permit violation, the Complaint is therefore defective as it concerns the alleged Section 21(b) violation. As was held in E & E Hauling, PCB 74-473, 16 PCB 215 (1975), a Section 21(b) open dumping charge is not properly based on an operating permit violation.

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

#### ORDER

IT IS THE ORDER OF THE BOARD that:

1. Respondent Helms is found to have operated his refuse disposal site in violation of Rule 202(b)(1) of the Board's Solid Waste Regulations and Section 21(e) of the Environmental Protection Act and shall pay a penalty of \$100.00 for such violations. Penalty payment by certified check or money order payable to the State of Illinois shall be made within 35 days of this Order to: Fiscal Services Division, Illinois Environmental Protection Agency, 2200 Churchill Road, Springfield, Illinois, 62706.

2. Respondent Helms shall cease and desist from operating the refuse disposal site unless and until he has first obtained the requisite permit from the Agency or has been granted a variance from the Board.

3. The portion of the Complaint alleging violation of Section 21(b) of the Act is dismissed.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 11<sup>th</sup> day of February, 1976 by a vote of 4-0.

  
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Christan L. Moffett, Clerk  
Illinois Pollution Control Board