

ILLINOIS POLLUTION CONTROL BOARD
March 25, 1976

ENVIRONMENTAL PROTECTION AGENCY)
of the State of Illinois,)
)
Complainant,)
)
v.) PCB 75-394
)
CHEESEMAN CONSTRUCTION COMPANY,)
a Delaware Corporation, and)
MRS. HOWARD RICE, an individual,)
)
Respondents.)

Ms. Dorothy J. Howell, Assistant Attorney General, appeared on behalf of the Complainant.
Mr. James J. Madden appeared on behalf of the Respondents.

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

The Illinois Environmental Protection Agency (Agency) filed a complaint against Cheeseman Construction Company (Cheeseman) on October 10, 1975. The Agency subsequently filed an amended complaint on October 24, 1975 against both Cheeseman and Mrs. Howard Rice. It was alleged that Mrs. Rice owned and that Cheeseman operated a refuse disposal site in Stephenson County, Illinois, without an operating permit on a continuous basis since on or about July 26, 1974 in violation of the Illinois Pollution Control Board's Rules and Regulations, Chapter 7: Solid Waste, Rule 202(b) and Section 21(b) and 21(e) of the Environmental Protection Act, Ill. Rev. Stat. Ch. 111 1/2, §1021(e) (1973).

A request for Admission of Fact was filed by the Agency on November 12, 1975. This request was unanswered by Respondent Rice. Therefore, the facts of the request are deemed admitted, under the Board's Procedural Rule 314. Thus, Respondent Rice admits ownership of the site at issue, her leasing the site to Cheeseman, and use of the site for the deposition of solid wastes and discarded materials as well as receipt of notice of the violations.

Cheeseman responded to the request admitting operation of the solid waste management site since on or about July 27, 1974 without an operating permit. Cheeseman stated in mitigation that the deposited materials consisted only of non-organic materials, dirt, rock, crushed rock and brick from Cheeseman construction sites and that the total volume was 3,200 cubic yards deposited during the course of no more than 85 days. Use of the site has been discontinued since December 1, 1975. The Agency submitted that the Cheeseman deposits were demolition wastes consisting of cardboard, metal, plasterboard, wood, paper, concrete, dirt, rock, crushed rock and brick.

Prior to the filing of the complaint seven letters of notification of violation were sent to Cheeseman.

A Stipulation of Facts and Proposal for Settlement was presented at the hearing. There was no further testimony or public comment.

The parties' agreement proposes that Cheeseman will refrain from use of the waste management site until a permit is obtained. The application for the permit will be filed no later than thirty days after entry of a final order by the Board. Within 120 days Cheeseman shall obtain the permit and comply with all applicable conditions therein.

If Cheeseman elects not to obtain a permit, respondent will refrain from further use of the site and will cover the site in accordance with Regulations no later than 120 days after entry of a final order. This Settlement Proposal is acceptable to the Board.

Respondents Cheeseman and Rice agree to be jointly and severally liable for a penalty of \$750.

The Stipulation of Facts and Agreed Settlement by the parties is found adequate under Rule 333 of our Procedural Rules (E.P.A. v. City of Marion, 1 P.C.B. 591).

The Board finds the conditions of the settlement to be justified in light of the criteria of Section 33(c) of the Environmental Protection Act, i.e. the degree of injury, social and economic value of the facility and site, technical practicability and economic reasonableness of compliance.

The Board finds that Respondents Cheeseman and Rice were in violation of Rule 202(b), Chapter 7 of the Board's Solid Waste Regulations and of 21(e) of the Environmental Protection Act. A violation of 202(b) does not constitute a violation of 21(b) of the Act and that portion of the Complaint is dismissed. See E.P.A. v. E. & E. Hauling, Inc., PCB 74-473 (1975).

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

ORDER

It is the order of the Pollution Control Board that:

1. Respondents, Cheeseman Construction Company and Mrs. Howard Rice, were found to have violated Rule 202(b), Chapter 7, Solid Waste Regulations and Section 21(e) of the Environmental Protection Act.
2. Respondents will either apply within 30 days and obtain an operating permit within 120 days for the refuse disposal site in question or will put on a final cover in accordance with regulations within 120 days of this order.
3. Respondents, Mrs. Howard Rice and Cheeseman Construction Company, shall be jointly and severally liable for a penalty of \$750. Penalty payment shall be by certified check or money order made payable to:


State of Illinois
Environmental Protection Agency
Fiscal Services Division
2200 Churchill Road
Springfield, Illinois 62706

Payment shall be made no later than 30 days after adoption of this order.

4. The portion of the Complaint alleging violations of Section 21(b) of the Act is dismissed.

Mr. Jacob Dumelle concurred.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 25th day of March, 1976 by a vote of 5-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board