

ILLINOIS POLLUTION CONTROL BOARD  
November 6, 1975

ENVIRONMENTAL PROTECTION AGENCY, )  
 )  
 Complainant, )  
 )  
 v. ) PCB 75-126  
 )  
 COLLINS IMPROVEMENT COMPANY, INC., )  
 an Illinois corporation, LAVERNE )  
 COLLINS, d/b/a/ CONCRETE CASTING )  
 COMPANY, and LAVERNE COLLINS, )  
 an individual, )  
 )  
 Respondents. )

Ms. Joan C. Wing, Assistant Attorney General, appeared for the Complainant;

Mr. Laverne Collins, Pro se, appeared for the Respondents.

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

The Environmental Protection Agency, (Agency), filed the original Complaint in this matter on March 21, 1975. The Agency subsequently filed an Amended Complaint on April 1, 1975, charging Respondents individually and jointly with the operation of a solid waste management site in Winnebago County, Illinois, without the required operating permits from the Agency during the period July 27, 1974 to April 1, 1975. The Amended Complaint charges violations of Sections 21(b) and 21(e) of the Environmental Protection Act and Rule 202(b)(1) of Chapter 7: Solid Waste, of the Pollution Control Board, (Board), Rules and Regulations. Ill. Rev. Stat. CH 111-1/2, § 1021(b)(1973); PCB Regs., CH 7, Rule 202(b)(1). A hearing was held in Rockton, Illinois, on July 14, 1975. All Respondents were represented at that hearing by Mr. Laverne Collins.

There is no doubt that no solid waste management site operating permit was issued for the site in question. In fact, Mr. Collins admitted at one point that he decided not to apply for an operating permit because of the expense involved, (R. 57), buttressing Agency evidence on that point. Instead, Respondents' rather disorganized Pro se defense on this Complaint concentrated on the following issues:

1. The site in question is not a landfill, (R. 5).

2. Part of the site in question is owned and operated by individuals other than Respondents here, (R. 45).

3. Respondents here should not be held liable for activities generally carried on in the area, (R. 39, 46).

None of these defenses is valid. First, the record is replete with admissions that the site was operated as a landfill, (R. 39, 46). Second, cross-examination by the Agency clearly showed that, regardless of the activities of others on adjacent properties, the site for which violation is charged in the Complaint is owned and operated by one or more of the Respondents here, (R. 48-50). Third, Respondents claim as a defense that others are performing essentially the same activities as are charged in the Instant Complaint is wholly without merit; the activities of others provide no excuse for any violations by Respondents.

In addition, Mr. Collins claimed at the hearing that he was, "filling a hole...it was not a landfill." (R. 40). Apparently, because of that conclusion and Mr. Collins' additional conclusion that he was just using "clean fill," (e.g., R. 54), he felt that the site in question was not in violation.

We also find this defense to be wholly without merit. It is apparent that Mr. Collins closed the site in question, at least partially as a result of his failure to obtain a solid waste management site operating permit, (e.g., R. 42, 37, 45). He at that time apparently felt that the Permit requirement applied to this site. At some time in 1974, however, Mr. Collins ". . . looked across the river at this Jerges property and their dumping. . . . They are building there with the same material. . . I figured why should I stop. . . . So I just told the corporation to go back and dump more foundry dirt in there." (R. 46; see also R. 36, 38).

There is, in summary, no question here as to whether a violation of the operating permit requirement occurred here. Respondent clearly operated a solid waste management site, and, without the required permits.

Nor do the factors in Section 33(c) of the Act affect our determination that a violation occurred here. The operation of a solid waste management site without the necessary permits presents a serious challenge to the permit system, which the Board has instituted to protect against environmental damage.

See, EPA v. Watts Trucking, PCB 74-131 (September 29, 1975, Opinion at 9). The social and economic value of a properly run solid waste management site cannot be questioned here, but without the necessary operating permits it becomes impossible to weigh that value against the possibility of significant environmental harm. Nor, do Respondents' contentions as to the "clean" nature of the fill used at this site affect our judgement in this regard. Although Mr. Collins claimed that the Agency stated his site was suitable for "dry fill," no evidence of such a statement by the Agency was entered at the hearing. Regardless of the site's general suitability, no site can be adjudged suitable as a solid waste management site unless the conditions of the permit system have been met, as a guarantee of said suitability. Nor is priority of location an issue here; there is no question that Respondent Collins reopened the subject site without a permit after the July 27, 1974 date on which the permit requirement became applicable for existing solid waste management sites.

As regards the economic reasonableness and technical practicability of compliance with Board regulations, we again feel that Respondents' failure to obtain an operating permit is unexcused. Respondent Collins did, in 1973, submit an application for an operating permit to the Agency; that application was rejected because Mr. Collins used an obsolete form. After inquiring with consulting engineers, Mr. Collins decided not to reapply for an operating permit, for economic reasons, (R. 57). Mr. Collins apparently felt that three to four thousand dollars was more than an operating permit was worth, for a site with a "couple of years" remaining useful life, (R. 59).

Applying the same factors under Section 33(c) of the Act to the imposition of a penalty, we find that a penalty of three thousand dollars (\$3,000.00) is reasonable for the deliberate, blatant and unexcused violations we find here. Respondent's failure to obtain an operating permit was irresponsible, and his deliberate operation of the 100 acre site without such a Permit constitutes unacceptable conduct in flagrant violation of the Environmental Protection Act and this Board's rules.

In mitigation, Respondent seems to claim that he used "clean fill" on this site. It is within the purview of this Board's technical expertise that we may, and do, reject Respondents' contention as to the "clean fill" quality of foundry sand without further evidence. Foundry sand, after use, can contain significant quantities of various chemicals used in foundry processes. Unfortunately, the Agency failed

to explore the actual nature of the foundry sand being accepted at Respondents' landfill, or the possibilities of resulting leachate, etc., which would have had considerable bearing on the issues of aggravation or mitigation. We are left only with Respondents' admittedly deliberate violation of the permit requirement. After repeated warnings and inspection visits from the Agency, Respondent, as of the date of hearing in this matter, had still failed to file a new permit application. For that reason we shall, in addition to a \$3,000.00 penalty, order Petitioner to cease and desist all operations on the subject site, unless a solid waste management site operating permit has been applied for within 90 days of the date of our Order here, and received within 180 days thereafter. We take this action as a result of Respondents' admission, (R.42, 54), that the site is still in operation.

We also feel that the record here supports the imposition of our orders, regarding both the penalty and the cease and desist requirement, against both Mr. Collins, individually, and Collins Improvement Company, Inc., an Illinois corporation. Mr. Collins individually directs all landfill operations on the site, representing both himself and the corporation. The corporate form cannot, in this instance, shield Mr. Collins from individual liability, (See R. 41-42, 48-49). The record contains no indication, however, that Mr. Collins, d/b/a Concrete Casting Company, has any interest in the site.

The Board has previously stated that a violation of Rule 202(b)(1) of the Solid Waste Regulations will not support a finding of violation of Section 21(b) of the Act; e.g., EPA v. E & E Hauling, PCB 74-473 (March 26, 1975); EPA v. Robinson, PCB 74-391 (April 4, 1975); EPA v. Wauconda Sand and Gravel Co., PCB 74-415 (Aug. 14, 1975). No violation of Section 21(b) of the Act has been shown here; that portion of the Complaint alleging open dumping must be dismissed.

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

ORDER

1. IT IS THE ORDER OF THE POLLUTION CONTROL BOARD that Laverne Collins, an individual, and Collins Improvement Company, Inc., are found to have operated a solid waste management site in Winnebago County, Illinois, from July 27, 1974, to April 1, 1975, without the required operating permits from the Environmental Protection Agency, in violation of Section 21(e) of the Environmental Protection Act and Rule 202(b)(1) of Chapter 7: Solid Waste, of the Pollution Control Board Rules and Regulations.

2. Respondents Laverne Collins, an individual, and Collins Improvement Company, Inc., shall, within 30 days of the date of this Order, jointly or severally, pay as a penalty for the above violations the sum of three thousand dollars (\$3,000.00), payment to be made by certified check or money order to:

Environmental Protection Agency  
Manager, Fiscal Services  
2200 Churchill Road  
Springfield, Illinois 62706

3. Respondents Laverne Collins, an individual, and Collins Improvement Company, Inc., shall cease and desist all solid waste management operations or disposal operations on the subject site. Unless all appropriate permits have been applied for and received within 180 days of the date of this Order, Respondents shall close such site in a manner consistent with all applicable Board Regulations.

4. That portion of the Amended Complaint in this matter alleging violation of Section 21(b) of the Environmental Protection 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 6<sup>th</sup> day of November, 1975, by a vote of 4-0.

  
Christan L. Moffett, Clerk  
Illinois Pollution Control Board