

ILLINOIS POLLUTION CONTROL BOARD
August 28, 1975

ENVIRONMENTAL PROTECTION AGENCY,)
)
 Complainant,)
)
 v.) PCB 75-38
)
)
 CITY OF MONMOUTH,)
)
 Respondent.)

Mr. Anthony B. Cameron, Assistant Attorney General, on behalf of Complainant;

Mr. Buford W. Hottle, Jr., Attorney, on behalf of Respondent.

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

The Environmental Protection Agency (Agency) filed a complaint on January 27, 1975 charging respondent, City of Monmouth (Monmouth) with failure to obtain an operating permit for a solid waste management site, in violation of Rule 202(b)(1), PCB Rules and Regulations, Chapter 7 (Solid Waste) and Section 21(e) of the Environmental Protection Act.

A Request For Admissions Of Fact, filed by the Agency on January 31, 1975, went unanswered by Monmouth. A public hearing in this matter was held in Monmouth on July 16, 1975.

At the hearing the Agency introduced as Complainant's Exhibit No. 1 the Request For Admissions Of Fact. This exhibit constitutes the Agency's total case-in-chief. It asserted that Monmouth operated its solid waste management site, located in Warren County, without a permit on August 21, September 4 and September 12, 1974 and also on two or more days each week between July 28, 1974 and January 25, 1975. It further asserted that Monmouth did not possess an operating permit for this site at any time between July 27, 1974 and January 24, 1975. Under Board Procedural Rule 314 these assertions stand admitted for the purpose of this action since Monmouth neither denied nor objected to them. Although such denials or objections would have had to occur within twenty days after service, it is also relevant to note that Monmouth similarly failed to deny the truth of these assertions at the hearing held several months thereafter. On the basis of these admissions the Board finds that Monmouth did violate the Act and Solid Waste Regulations as alleged. There remains only the question of how much of a civil penalty should be assessed for these violations.

At the hearing Monmouth presented the testimony of George M. Bersted, Mayor, and Carl Palmer, Consulting Engineer, to explain the City's good faith attempts to conform with the permit requirement. In rebuttal, the Agency attempted to introduce letters purporting to show that Monmouth had notice of the permit requirement long before it attempted to comply with it. The evidence was withheld by the Hearing Officer as improper. For reasons noted below this decision of the Hearing Officer is overruled.

In his opening statement Mr. Hottle, representing Monmouth, indicated that it was the City's intention to show that it had done everything it could to obtain the operating permit. He explained:

...and we will show in our case that we tried to abide by all measures of a sanitary landfill since they asked us to...

And this is our position. We believe that the City of Monmouth has done all it can financially do toward completing requirements of securing this permit.

(R.7). In support of this position Mayor Bersted was called upon to testify that Monmouth took steps to procure a permit as soon as it learned of its obligation to do so:

Question: Generally speaking timewise, when did the City of Monmouth first know they had to have a permit to operate the landfill?

Answer: Our Street Superintendent advised myself and the Committee on January 24, 1974 that we had to have a permit by April 24, 1974.

Question: So you are talking about four months that you were asked to secure a permit, right?

Answer: Yes.

Question: What if anything was done by you as the Mayor or the City Council concerning the request of the Street Superintendent?

Answer: I immediately contacted our engineers.... that we would have to get to work on this and it would have to be in stages as far as the City was concerned because of the financials (sic) involved in obtaining this permit.

(R.15-16). Mayor Bersted further testified that Monmouth had so far expended \$11,000 for aerial maps and soil testing in its attempt to secure a permit (R.16-17). He also testified as to the considerable expenses for the operation of the landfill (R.19-21). On cross examination, a letter dated April 19, 1972 and addressed to Mayor Bersted from the Agency, was introduced, which letter acknowledged

receipt of an inquiry regarding the landfill and indicated attachment of instructions for, and copies of a permit application (R.30, Compl. Ex. 3). Mayor Bersted acknowledged receipt of the letter (R.30). Questioned about his earlier statement concerning the date on which Monmouth first became aware of the permit requirement, the Mayor responded:

Well, I believe my statement was that we -----
in the letter of January is when we got started
on that to meet the timetable of April. Prior to
that, we did not get started on it because of
financial difficulties.

Question: I see. So that is when you got started,
not when you knew about the requirements,
is that a correct statement?

Answer: That's right.

Monmouth also presented the testimony of Carl Palmer, whose consulting engineering firm was hired to prepare the plans and specifications necessary to obtain the permit. He testified that he was contacted sometime in early 1974 or late 1973 concerning the operating permit, but he could not recall exactly when (R.37). The remainder of his testimony outlined the steps taken, down to the very day of the hearing, to secure the permit. These steps included obtaining topographical maps and test borings (R.38). A photogrammetry firm was contacted on February 22, 1974 (R.39). On April 22, 1974, a letter was sent to the Agency requesting an extension of time beyond the April 24 deadline for permit applications (Resp. Ex.6). After receiving a letter from the Agency, dated April 24, indicating it could not grant such an extension, (Resp. Ex.7) Mr. Palmer continued to prepare the plans and specifications necessary for a permit application (R.43). The photo survey was completed by late June, and a soil survey was initiated in late August (R.45-46). Soil work was completed in November and analysis of ground water samples was begun. This work was completed in January 1975 (R.47). A permit application was finally submitted on February 19, 1975. After a meeting with the Agency in Springfield, the application was amended and resubmitted on February 26, 1975 (R. 53-54). A developmental permit was issued on April 1, 1975, approximately thirteen months after the photogrammetry firm was contacted (R.65, Resp. Ex.25). The permit conditioned the issuance of an operating permit upon completion of final cover on several portions of the site, compliance with the Act and regulations, and collection of background samples. Mr. Palmer indicated that, as of the day of the hearing, at least one of these conditions had been met (R.69).

In addition to the above witnesses, Monmouth also called to the stand Charles E. Clark, Manager of the Permit Section, Division of Land Pollution Control, Environmental Protection Agency, Mr. Clark testified that Monmouth had in fact submitted its permit application (R.71). In rebuttal the Agency recalled Mr. Clark and attempted to

introduce a series of letters, addressed to Monmouth from the Agency, to show that warnings had been issued concerning the permit requirement as early as October 4, 1973. Each of the letters indicated that Monmouth had no permit for the landfill and further indicated when permit applications were due. The Hearing Officer improperly denied these letters as exhibits as not being proper rebuttal evidence. They were forwarded to the Board, however, as part of the record as offers of proof. The Hearing Officer was clearly in error concerning the admissibility of these letters. They were offered for the sole purpose of showing that Monmouth had notice of the permit requirement. This goes to the issue of good or bad faith and is relevant to our consideration of any penalty in this action. It was Monmouth that first raised the issue of mitigation. Indeed, the whole of Monmouth's case must be viewed in the way of mitigation, since the technical violation itself was proven in the case-in-chief and never disputed. This is consistent with its attorney's opening statement and the testimony of the Mayor, as quoted above. Once raised, it was proper for the Agency to present such evidence as it had bearing on Monmouth's lack of good faith in attempting to secure the permit. The letters may also be viewed in the way of impeachment, since they bear on the Mayor's initial statements as to the time Monmouth first became aware of the permit requirement. Rather than the four month notice indicated in the Mayor's first statement, the letters show that Monmouth was on actual notice much earlier. The letters are hereby admitted and made a part of the record as follows:

Letter dated October 4, 1973	Comp. Ex. 4
Letter dated November 7, 1973	Comp. Ex. 5
Letter dated December 11, 1973	Comp. Ex. 6
Letter dated February 19, 1974	Comp. Ex. 7
Letter dated March 15, 1974	Comp. Ex. 8
Letter dated April 19, 1974	Comp. Ex. 9
Letter dated May 20, 1974	Comp. Ex. 10
Letter dated July 1, 1974	Comp. Ex. 11
Letter dated August 23, 1974	Comp. Ex. 12

The evidence in this case indicates that there is considerable mitigation in that Monmouth proceed with due dispatch once it had contacted its consulting engineering firm. Moreover, considerable money has been spent in preparation for the permit application. It is also evident, however, that Monmouth was on notice to apply for a permit long before it finally did. The Solid Waste Regulations were adopted on July 27, 1973, providing a period of one year within which to obtain an operating permit. The adoption of that regulation was sufficient to place Monmouth on record notice. Above and beyond that, numerous letters reminding Monmouth of the permit requirement were sent by the Agency. The record shows that once action was commenced, it took approximately a year before the permit application was filed. Had Monmouth initiated such action when the regulation was adopted, the application could have been completed much earlier, perhaps within or near the deadline, and earlier review of the quality of the operation would have been possible. After due consideration of the record in this case we find that a civil penalty of \$300 is warranted for Monmouth's failure to

secure an operating permit. Such a penalty is assessed not as a punishment, but rather to protect the integrity of the permit system and as an aid to the enforcement of the Act. In reaching this decision we have considered all the factors of Section 33(c) of the Act, and found that the degree of injury is minimal, the social and economic value of the landfill considerable, insufficient evidence concerning suitability of the site to its locale, and no technical or economic difficulty in correcting the violation.

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

ORDER

1. Respondent, City of Monmouth, shall pay a penalty of \$300 for its violation of Rule 202(b)(1), PCB Regulations, Chapter 7, and Section 21(e) of the Environmental Protection Act. Payment to be made within 35 days, to: Fiscal Services Division, Illinois Environmental Protection Agency, 2200 Churchill Road, Springfield, Illinois 62706.
2. Respondent, City of Monmouth, shall comply within 60 days with all special conditions of its development permit, No. 1975-28-DE.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 28th day of August, 1975 by a vote of 3 to 0.

Christan L. Moffett (gr)
Christan L. Moffett, Clerk
Illinois Pollution Control Board