

ILLINOIS POLLUTION CONTROL BOARD
May 22, 1975

ENVIRONMENTAL PROTECTION AGENCY,)
)
 Complainant,)
)
 v.) PCB 74-389
)
 BROWNING-FERRIS INDUSTRIES OF)
 ILLINOIS, INC., a Delaware)
 corporation,)
)
 Respondent.)

Mr. Marvin Medintz, Assistant Attorney General, appeared for the Complainant;
Mr. Richard Stables, Attorney, appeared for the Respondent.

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

The Complaint in this matter was filed by the Attorney General for the Environmental Protection Agency (Agency) on October 25, 1974. The Complaint alleged that Respondent Browning-Ferris Industries of Illinois, Inc., a Delaware Corporation, (Browning-Ferris), had operated a solid waste management site in Cook County, Illinois without the required operating permit from the Agency, in violation of Rule 202(b)(1) of Chapter 7: Solid Waste, of the Pollution Control Board (Board) Rules and Regulations, and Section 21(b) of the Environmental Protection Act (Act). Subsequently, on March 28, 1975 the Attorney General filed a Motion for Leave to file an Amended Complaint; the Amended Complaint is essentially similar to that originally filed, differing only in that it adds an allegation of violation of Section 21(e) of the Act by Browning-Ferris.

At a hearing held in the matter on January 28, 1975, the parties entered a Stipulation and Proposed Settlement (Stipulation), which forms the basis for our Opinion and findings here. In that document, Browning-Ferris stipulated that it had in fact operated a solid waste management site without the required permit from July 27, 1974, (on which date the operating permit requirement of Rule 202(b)(1) for existing solid waste management sites became effective), until November 1, 1974, on which date the subject facility was permanently closed. Browning-Ferris also agreed that under the terms of the settlement it would pay a civil penalty of \$2,000 for the admitted violation.

The Board finds the Stipulation and Proposed Settlement (Stipulation) in this matter acceptable for several reasons:

1. Browning-Ferris had planned before July 27, 1974 to close the subject facility and open another solid waste management site on adjacent property. Browning-Ferris employed consulting engineers to prepare a permit application for the proposed new facility, and it completed many other necessary arrangements for opening the new facility, also prior to July 27, 1974. That facility was never placed in operation due to the failure of Browning-Ferris to obtain the proper zoning.
2. The parties have stipulated that after July 27, 1974, when the subject facility was nearly filled to capacity, Browning-Ferris continued to operate it only on a sharply limited basis, in expectation that the proposed new facility on adjacent property would receive the various permits and zoning changes required.
3. The parties have stipulated that a primary purpose of Browning-Ferris in continuing to operate the old facility after July 27, 1974 was to avoid laying off the three employees who operated the old facility, who had longevity of 19, 10 and 4 years with Browning-Ferris at that facility, pending approval of the new facility.
4. Browning-Ferris has, since November 1, 1974, proceeded to apply final cover to the subject facility, in compliance with the applicable Board Regulations; that final cover is now substantially completed.

These factors allow the Board to accept the Stipulation in this matter, and provide a sufficient basis for our finding of violation and acceptance of the stipulated civil penalty.

Turning now to procedural matters, we must deal with the Attorney General's Motion for Leave to file an Amended Complaint. Browning-Ferris objected in a pleading filed before the Board on April 2, 1975, to the Attorney General's Motion insofar as the Amended Complaint continues an allegation of violation of Section 21(b) of the Act. Insofar as the Amended Complaint, by adding an allegation of violation of Section 21 (e) of the Act, merely conforms the pleadings to the proof adduced at hearing and in the Stipulation, as is proper under the Board's Procedural Rules, the Motion will be granted. But in keeping with our precedent in this matter the Board will dismiss that portion of that Complaint, as amended, which alleges a violation of Section 21(b) of the Act. EPA v. E & E Hauling, 74-473 (March 26, 1975).

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. Respondent Browning-Ferris Industries of Illinois, Inc., a Delaware corporation, is found to have operated a solid waste management site in Cook County, Illinois, from July 27, 1974 until November 1, 1974 without the required operating permit from the Illinois Environmental Protection Agency, in violation of Section 21(e) of the Illinois Environmental Protection Act and Rule 202(b)(1) of Chapter 7: Solid Waste, of the Board's Rules and Regulations.

2. Respondent Browning-Ferris Industries of Illinois, Inc., shall pay as a penalty for such violations the sum of \$2,000, payment to be made by certified check or money order within 35 days of the date of this Order to:

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

3. That portion of the Complaint, as Amended, alleging violation by Respondent Browning-Ferris Industries of Illinois, Inc., of Section 21(b) of the Illinois Environmental Protection Act, is dismissed.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order were adopted on the 22ND day of May, 1975 by a vote of 5 to 0.


Christan L. Moffett, Clerk
Illinois Pollution Control Board