

ILLINOIS POLLUTION CONTROL BOARD  
January 14, 1976

ENVIRONMENTAL PROTECTION AGENCY, )  
 )  
 Complainant, )  
 )  
 v. ) PCB 75-278  
 )  
 BOYD WITVOET, SR., )  
 )  
 Respondent. )

Messrs. Marvin I. Medintz and Jeffrey Herden, Assistant Attorneys General, appeared for the Complainant; Mr. Frank E. Glowacki, Attorney, appeared for the Respondent.

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

This matter is before the Board on a formal Complaint filed by the Attorney General on July 21, 1975, alleging that Respondent operated a solid waste management site in Cook County, Illinois, without the required operating permits from the Environmental Protection Agency (Agency), in violation of Sections 21(b) and 21(e) of the Environmental Protection Act (Act), and Rule 202(b)(1) of the Board's Solid Waste Regulations. Ill. Rev. Stat., Ch. 111-1/2, §§ 1021(e), 1021(b) (1975); PCB Regs., Chapter 7: Solid Waste, Rule 202(b)(1). An Amended Complaint filed September 30, 1975, added an additional count alleging violation of Section 21(b) of the Act and Rule 314(f) of Chapter 7, in that Respondent was alleged to have operated the same site in such a manner as to allow the infestation of the surrounding area with vectors (cockroaches). A hearing was held on October 17, 1975, in Chicago.

The record in this matter shows clearly that Respondent operated the site in question without the required permits from the Agency. Respondent himself admitted accepting refuse at the site for a fee and that, although a permit application had once been submitted to the Agency, no permits had ever been received, (R. 7, 8, 33, 38, 39). Respondent did not ever consider closing the site after the permit application had been denied by the Agency in 1974, (R. 34). Instead, Respondent testified that the site was closed on October 15, 1975, two days before the hearing in this matter and several months after the original Complaint had been filed, (R. 7). Respondent also admitted that he was aware of the permit requirement, (R. 30-32).

We have no difficulty finding a violation of the permit requirement from August 27, 1974 until October 15, 1975 and, therefore, violation of Section 21(e) of the Act and Rule 202(b)(1) of Chapter 7. (In accord with substantial Board precedent, the allegation of violation of Section 21(b) of the Act as regards this permit violation will be dismissed.)

Nor do we have any difficulty in finding a violation of Rule 314(f) of Chapter 7. In addition to considerable citizen testimony on the subject, the Attorney General ably presented testimony and exhibits from Agency and Cook County Department of Public Health employees showing that:

1. There were large numbers of cockroaches on Respondent's site (e.g., R. 48, 74, Compl. Ex. 7, 9).
2. There was a significant infestation of the area surrounding the site, (e.g., R. 11, 16, 19, 23).
3. The site in question was the source of the cockroaches infesting the site's neighbors, (e.g., R. 14, 15, 21, 48).

The citizen testimony at hearing indicated that the problem here is quite serious. One witness testified that it was necessary to protect a child's crib with insect netting, (R. 16). Another stated that, to control the insects, it was necessary to use chemicals harmful to her children, (R. 19). Other citizen testimony indicated that massive numbers of very large cockroaches, (see Compl. Ex. 7, consisting of bottled specimens), infested the area, considerably interfering with the normal enjoyment of life and property in the area of the site.

Turning to the factors in §33(c) of the Act, we find the following:

1. The character and degree of the injury caused by Respondent's violations was significant. The Permit System is designed by the Board to protect against just the sort of injury seen here, and Respondent's willfull operation without the required permits adds to the magnitude of such injury.

2. The social and economic value of a properly permitted and operated solid waste management site cannot be questioned. Here, however, there was evidence that the site, in addition to failing to have the required permit, was not operated properly. Respondent failed to properly cover the refuse accepted at the site, (R. 44), apparently adding to the vector problem. Roaches were seen to be emerging from the soil on the site, (R. 48, 74, 79). The social and economic value of an improperly run site, leading to the problems seen here, is considerably diminished when weighed against the damage caused by such operation.

3. The operation of this site, in light of the problems caused by such operation was, under the circumstances, patently unsuitable for the area in question. We need not judge the suitability of a properly permitted and operated site for the area in question here; this site was unpermitted and improperly operated. Because the problems here began within the last three or four years, and because the permit violation dates only from August 27, 1974, priority in location is not in issue here.

4. Nor is the technical practicality and economic reasonableness of eliminating the vector problem in issue. Respondent agreed at the hearing that, should the Board find that there is a vector problem, he would engage professional exterminators to eliminate it, (R. 94). As regards the permit violation, we find that where a site is suitable for operation as a sanitary landfill, it is both economically reasonable and technically practical to obtain the required permits.

Looking next to the defenses raised by Respondent, we find them to be without merit. Respondent first claimed that he could not properly be charged here, as the site in question is operated by a partnership of which he is only one member. While the Hearing Officer acted improperly in denying Respondent's Motion to Dismiss on this ground at hearing, (such motion should have been referred to the Board), the issue is nonetheless moot. Respondent admitted full responsibility for the operation of the site (R. 7), as a partner, and can be held individually responsible. Nor in any case is there a requirement that the Board have before it all the partners in this type of situation.

Respondent then pointed to efforts that he had made to control the vector problem. The testimony showed that Respondent's efforts were notably without success, and were weak at best. Respondent was sure of neither the name of the "chemical outfit," (R. 25-26), that he asked for advice, nor the name of the chemicals that he ultimately used, (R. 25-27). In light of the problems testified to, Respondent's occasional sprayings over limited areas (active areas only) of the site were clearly insufficient.

Respondent also attempted to show that there were other landfills in the area, apparently in an effort to prove that the vectors may have come from such other sites. In light of the direct testimony elicited by the Attorney General, any such proof would have had to have been of considerable weight; it was, on the contrary, quite weak. In fact, Respondent never attempted to show anything except the bare existence of such other sites.

Respondent last attempted to show that the site in question accepted only "clean" fill, such as demolition debris. While Respondent may have felt that the fill he accepted at the site should not cause a vector problem, the testimony at hearing showed that it in fact did cause the problem. One Agency witness testified that the berm around Respondent's site was composed of a combination of dirt and "wrecking material"; the same witness observed multitudes of cockroaches emerging from cracks in the berm, and the antennae of many others visible just below the surface, (R. 48).

In light of the factors discussed above, including the testimony and evidence presented at hearing, the considerations in §33(c) of the Act and Respondent's attempted defenses, we find that a penalty of \$1,500 is appropriate here. \$1,000 is necessary, we feel, to aid in protecting the permit system set up under the Act and our Rules; the additional \$500 is necessary to aid in the enforcement of our Rule on vectors, particularly in light of the seriousness of the problem here. In addition, we shall take Respondent up on his offer to retain professional help in eliminating that problem, and order him to do so.

Since Respondent has already closed the site, our cease and desist order will present no hardship; we shall also require that the site remain closed until the problems here have been remedied. It appears that Respondent has filled the site to two-thirds of the original 150,000 yard capacity which it had after Respondent's original use of the site for sand extraction, (R. 93).

While we find a violation of Rule 314(f), we must dismiss the alleged violation of Section 21(b) of the Act in connection with the vector problem. Operation in violation of Rule 314(f) cannot be equated with the operation of an open dump, or with open dumping.

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 Boyd Witvoet, Sr., is found to have operated a solid waste management site in Cook County, Illinois, without the required permits from the Environmental Protection Agency, and in such a manner as to cause a vector problem, in violation of Section 21(e) of the Environmental Protection Act, and Rules 202(b)(1) and 314(f) of Chapter 7: Solid Waste, or the Pollution Control Board Rules and Regulations.

2. Respondent shall pay as a penalty for the aforesaid violations the sum of Fifteen Hundred Dollars (\$1,500.00), payment to be made by certified check or money order within thirty (30) days of the date of this Order, to:

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

3. Respondent shall continue to cease and desist all operations at said solid waste management site until the aforesaid violations have been remedied. Such violations shall have been remedied when Respondent has received all appropriate permits for said site from the Environmental Protection Agency.

4. Respondent shall engage the services of professional exterminators, to eliminate all vector problems on said site, in conformity with all applicable Rules and Regulations of this Board.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 14<sup>th</sup> day of January, 1976 by a vote of 4-0.

  
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Christan L. Moffett, Clerk  
Illinois Pollution Control Board