

ILLINOIS POLLUTION CONTROL BOARD  
April 4, 1975

ENVIRONMENTAL PROTECTION AGENCY, )  
  )  
                  Complainant,          )  
  )  
                  v.                      )        PCB 74-391  
  )  
LEROY ROBINSON,                          )  
  )  
                  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 alleges that Respondent Leroy Robinson operated, as a sole proprietor, a solid waste management site in Will County, without the requisite operating permit issued by the Agency.

Turning first to the Complaint itself, the Board finds that the Complaint herein is partially deficient on its face. The Complaint properly alleges that Respondent Robinson operated a solid waste management site without the operating license required under Rule 202(b)(1) of the Board's Solid Waste Rules and Regulations. The permit requirement of that rule became effective on July 27, 1974. But the Complaint herein improperly alleges a violation of Section 21(b) of the Environmental Protection Act. Ill. Rev. Stat., ch. 111 1/2, Sec. 1021 (b)(1973).

Section 21(b) of the Environmental Protection Act prohibits the open dumping of refuse other than garbage in violation of regulations adopted by the Board. The Complaint herein does not in any way address the question of open dumping; while the Board does not require fact pleading, such a general allegation of violation of a Section of the Act is insufficient in a Complaint.

It is clear to the Board that the Attorney General intended to allege a violation of Section 21(e) of the Act; that Section of the Act does in fact prohibit the collecting of any refuse or any refuse disposal operation, without a permit granted by the Agency. The Board cannot, however, find a violation of a Section of the Act where such violation has not been alleged in the Complaint. That portion of the Complaint herein alleging a violation of Section 21(b) of the Act must be dismissed.

The Board then turns to examine the properly pleaded allegation of violation of Rule 202(b)(1) of the Solid Waste Rules and Regulations. A hearing was held on this matter on January 9, 1975. Respondent Robinson did not appear at that hearing. Nor, it appears from the testimony entered at the hearing, has Mr. Robinson replied to or acknowledged any communication from either the Agency or the Hearing Officer regarding the Complaint or the hearing held in this matter. The Hearing Officer, upon Mr. Robinson's failure to appear, entered an "order of default" against Mr. Robinson (R. 3).

Pursuant to Board Procedural Rule 320, the Agency then proceeded to call a single witness to testify at the hearing. That witness testified that in the course of his employment with the Environmental Protection Agency he had inspected the site in question, that the site was in fact operating on October 9, 1974, and that the site did not have or possess the requisite operating permit from the Agency (R. 4,5). The witness further testified that he had notified Mr. Robinson of the fact that he did not have a permit, such notification being made by mail.

Board Procedural Rule 320 does in fact state that the Board may enter an appropriate Order based on evidence introduced at a hearing, when a party has defaulted by failure to appear on the date set for hearing. That rule is in conformance with Section 33(a) of the Act, which states that upon due consideration of written and oral statements, testimony and arguments submitted at the hearing, or upon default in appearance of the Respondent, the Board shall issue and enter such final Order as it shall deem appropriate under the circumstances.

While the Board may in fact find a violation upon the default of the Respondent, that is not the case here. The Board has previously held that defaults are to be discouraged. Monyek v. EPA, PCB 71-80, 2 PCB 125 (1971). See also, Moody v. Flintkote, PCB 70-36, 2 PCB 341, 356 (1971). Here, however, even were the Board's standard in finding a violation upon default a liberal one, a violation could not be found.

First, the Agency has failed to make a prima facie case in this matter. While the Agency did show that a solid waste management site was in operation in Lockport, off of Harvard and Sheffield Streets, and that such site was not covered by an operating permit issued by the Agency, the Agency has wholly failed to prove that such site was in any way connected with the Respondent herein. In fact, the Agency failed to make any offer of proof regarding the operation or ownership of a solid waste management site by Mr. Robinson. In finding a violation the Board simply cannot infer so vital a part of the offense.

(It should also be noted that the bald allegation of ownership-by sole proprietorship-of the site in question, as contained in the Complaint, in no way constitutes proof of such an allegation. Board Procedural Rule 308(a) clearly states that where a Respondent has not answered a Complaint within 20 days, all material allegations therein shall be taken as denied.)

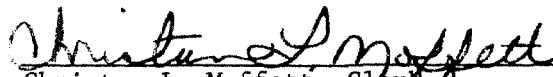
Secondly, it is not clear that default should have been ordered by the Hearing Officer in this matter. The Agency's Attorney at hearing admitted that although a copy of the Complaint was mailed to Mr. Robinson by certified mail, return receipt requested, the return receipt was signed by a Phyllis Simpson. (The fact that Mr. Robinson did not personally sign the return receipt is also reflected on that receipt itself, submitted with the affidavit of service filed by the Attorney General). There was no testimony entered at the hearing indicating any connection between Phyllis Simpson and Mr. Robinson, or that the address was even correct. Although the Hearing Officer stated, (R. 6), that he had also notified Mr. Robinson by mail of the hearing that notice was sent to an address different from that shown on the return receipt connected with the Complaint; further, there is no showing that the correspondence sent by the Hearing Officer was by certified or registered mail. Thus, the proof that Mr. Robinson was ever in fact notified of the Complaint in this matter is inadequate.

For the reasons stated above, the Board has no choice but to dismiss the complaint in this matter. 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 the Complaint in this matter be dismissed without prejudice.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 4<sup>th</sup> day of April, 1975 by a vote of 3 to 0.

  
Christan L. Moffett, Clerk  
Illinois Pollution Control Board