

ILLINOIS POLLUTION CONTROL BOARD

April 10, 1975

ENVIRONMENTAL PROTECTION AGENCY,     )  
                  Complainant,         )  
  )  
          v.                             )     PCB 74-388  
  )  
CITY OF ST. CHARLES,                    )  
a municipal corporation,                )  
                  Respondent.         )

Mr. Jeffrey S. Herden, attorney for Complainant.  
Mr. Alvin Catella, attorney for Respondent.

OPINION AND ORDER OF THE BOARD (by Dr. Odell)

On October 25, 1974, the Illinois Environmental Protection Agency (Agency) filed with the Illinois Pollution Control Board (Board) a Complaint against the City of St. Charles. It charged that the City, from July 27, 1974, until October 25, 1974, failed to have an Agency Operating Permit for its solid waste management site in violation of Section 21(b) of the Illinois Environmental Protection Act (Act) and Rule 202(b)(1) of the Solid Waste Regulations (Chapter Seven). An Amended Complaint, alleging the additional violation of Section 21(e) of the Act was filed on March 28, 1975. The site is located in Section 35, Township 40 North, Range 8 East, in Kane County, Illinois.

A hearing was held on February 13, 1975, in the City Council Chambers of St. Charles, Illinois. Complainant established that the site was operating on July 31 and September 6, 1974, without a permit (R. 6). No permit has yet been applied for (R. 10). Refuse was observed at the site but no garbage was seen there during the July and September visits (R. 8). Respondent admitted dumping sludge and concrete at the site from July 31 until September 19, 1974 (R. 13). All dumping of sludge was discontinued after September 19, and it is now being hauled to another landfill (R. 19). At the present time, soil and landscape waste are being dumped at the site (R. 13). The City was aware that it was violating the Act but decided against applying for a permit while the sludge was being dumped because of the additional expenses for soil tests and borings associated with such an application (R. 17). The City intends to apply for an Agency Operating Permit to deposit concrete and soil at the site (R. 21).

We find that Respondent violated Section 21(e) of the Act and Rule 202(b)(1) of Chapter Seven from July 27, 1974, until October 25, 1974, as alleged in the Complaint. The fact that sludge was no longer deposited at the site after September 19

does not mean that violations ceased or obviate the need for an Operating Permit, because concrete and landscape waste constitute refuse within the meaning of the Act and Chapter Seven. While Respondent's status as a municipality argues for mitigation, Respondent's flaunting of the Act and Chapter Seven Regulations means that more than a nominal penalty must be assessed. If a person believes that it has grounds for non-compliance, the variance procedure is available to enable it to establish its case. A person does not have the option of ignoring the mandates of the Act and Regulations.

We hold that a violation of Rule 202(b)(1) of Chapter Seven does not constitute a violation of Section 21(b) of the Act. First, the language in Section 21(b) states that no person shall "cause or allow the open dumping of any other refuse in violation of regulations adopted by the Board;" Section 3 of the Act defines "Open Dumping" and "Sanitary Landfill" as follows:

- 3(b) "OPEN DUMPING" means the consolidation of refuse from one or more sources at a central disposal site that does not fulfill the requirements of a sanitary landfill.
- 3(1) "SANITARY LANDFILL" means the disposal of refuse on land without creating nuisances or hazards to public health or safety, by confining the refuse to the smallest practical volume and covering it with a layer of earth at the conclusion of each day's operation, or by such other methods and intervals as the Board may provide by regulation.

Both definitions refer to the day-to-day physical operations and procedures used at a solid waste management site. We do not believe that operating a site without a permit is the kind of activity described by the definition of "Open Dumping" and "Sanitary Landfill" and, therefore, it is not proscribed by Section 21(b) of the Act. Second, Section 21(e) of the Act clearly indicates that failure to have a permit violates Section 21(e). Section 21(e) of the Act would be unnecessary if such activity were illegal under Section 21(b) of the Act. Since we presume that Section 21(e) of the Act was included for some logical reason, we conclude that it is meant to proscribe activity not otherwise limited under Section 21 of the Act.

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

#### ORDER

IT IS THE ORDER of the Pollution Control Board that:


1. Respondent violated Section 21(e) of the Act and Rule 202(b)(1) of Chapter Seven as set out in the Opinion.

2. Respondent shall pay a penalty of \$400.00 for its violations of the Act and regulations established in this Opinion. Payment shall be by certified check or money order payable to the State of Illinois, Fiscal Services Division, Environmental Protection Agency, 2200 Churchill Road, Springfield, Illinois 62706. Payment shall be made within 35 days of the adoption of this Order.

3. Respondent shall apply to the Agency for an Operating Permit within 30 days of the adoption of this Order.

4. Respondent cease and desist violating Section 21(e) of the Act and Rule 202(b)(1) of Chapter Seven within 120 days of the adoption of this Order.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 10<sup>th</sup> day of April, 1975, by a vote of 4 to 0.

  
Christan L. Moffett