

ILLINOIS POLLUTION CONTROL BOARD

April 24, 1975

ENVIRONMENTAL PROTECTION AGENCY,	)	
Complainant,	)	
	)	
v.	)	PCB 74-387
	)	
KRENZ TRUCKING, INC., an Illinois	)	
corporation,	)	
Respondent,	)	
	)	
KRENZ TRUCKING, INC., an Illinois	)	
corporation,	)	
Petitioner,	)	
	)	PCB 74-457
v.	)	
	)	(CONSOLIDATED)
ENVIRONMENTAL PROTECTION AGENCY,	)	
Respondent.	)	

Mr. Jeffrey S. Herden, attorney for Environmental Protection Agency.  
Mr. Samuel T. Lawton, Jr., attorney for Krenz Trucking, Inc.  
Mr. Harold C. McKenney, attorney for Robert and John Veugeler, objectors.

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

On October 25, 1974, the Illinois Environmental Protection Agency (Agency) filed a Complaint with the Illinois Pollution Control Board (Board) against Krenz Trucking, Inc. (Krenz). The Complaint charged that Krenz operated its solid waste management site (site) without an Agency Operating Permit from July 27, 1974, until October 25, 1974, in violation of Rule 202(b)(1) of the Solid Waste Regulations (Chapter Seven) and Section 21(b) of the Illinois Environmental Protection Act (Act). An Amended Complaint, alleging the additional violation of Section 21(e) of the Act, was filed on March 28, 1975. The site is located on the western side of RR-Virginia Cutoff Road, east of the Crystal Lake Airport, in Section 16, Township 43 North, Range 8 East of the Third Principal Meridian in McHenry County, Illinois.

On December 6, 1974, Krenz filed a Petition For Variance with the Board. Petitioner requested a one-year variance from the permit requirements for its site or until such earlier time

that the Agency issued it an Operating Permit. The Petition For Variance stated that depressions at the site would be filled and the site completely closed out by the fall of 1976. On the same day, Krenz filed a Motion To Consolidate the Petition For Variance with PCB 74-387. This Motion was granted by the Board on December 19, 1974. On January 29, 1975, the Agency recommended that the variance be denied until Petitioner was able to establish its need for the variance and agreed to carry out certain conditions associated with the grant of the variance. On January 29, the McHenry County Department of Health requested the Board to extend case deadlines until more information could be gathered on possible groundwater contamination at the landfill. The Board denied this request on February 6. On January 31, 1975, John and Robert Veugeler, McHenry County residents, sought to intervene alleging they would be adversely affected by the grant of a variance. The Hearing Officer, with consent of the parties, granted this motion at the hearing (R. 4). On March 21, 1975, Krenz waived the time for final Board action until April 24, 1975.

The hearing was held at City Hall in Woodstock, Illinois, on January 31, 1975. The evidence established what Krenz admitted in its Brief (pages 4, 5) that Rule 202(b)(1) of Chapter Seven was violated as alleged in the Complaint. Krenz had knowledge in October 1973 that it would need a permit [Agency Ex. B (1)]. An application was made on October 30, 1974; the Agency denied the Operating Permit on January 28, 1975 (R. 183). It is the policy of the Agency to deny permits when there are not sufficient facts to negate the possibility of a water pollution hazard at such sites (R. 183, 190). The site has now been shut down and will only be reopened if the Board grants Petitioner its variance (R. 157). During the time that the site was operating, periodic but minor violations relating to shelter for personnel, daily cover requirements, and adequate fire protection arrangements occurred at the site (R. 19, Agency Ex. B). These were all remedied by January 8, 1975 (R. 14, Resp. Ex. 2). The reason for delay in applying for the Operating Permit was the cost of obtaining necessary data for application as well as discussion with the landowners of the site leased by Krenz to decide who was going to pay for the costs associated with permit application (R. 156).

We assess a penalty of \$350.00 for Krenz's violations of Rule 202(b)(1) of Chapter Seven and Section 21(e) of the Act. Consideration of factors in Section 33(c) of the Act makes such an amount appropriate. First, using the site without an Operating Permit is an injury to the general welfare of the people of Illinois because it may encourage others to disregard the Act. Second, the economic and social value of a pollution source is diminished by non-compliance with applicable laws governing

operations at that source. Third, the failure to have an Operating Permit in part stems from Krenz's choice of using this questionable site for landfill operations. Fourth, the factor of technical practicability and economic reasonableness is not readily applicable here in determining a permit violation. Finally, Krenz's long delay in applying for a permit aggravates the penalty when it had knowledge of the permit requirement in the fall of 1973.

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 definitions 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.

The solid waste management site covers approximately 30 acres in or near Crystal Lake, Illinois. The site was once a gravel pit, and refuse in unknown quantities has been dumped at the location for many years (R. 31, 32, 76, 88). In 1971 Petitioner first entered into an agreement with the now deceased owner to lease the site for use as a landfill (R. 145). All 30 acres of the site have received refuse material in various thick-

nesses. Much of the more recent materials overlies older fill areas [Resp. Ex. 11 (Ex. "G")]. The existing fill is located primarily on the north, south, and west areas of this site, which can be roughly described as running north and south in the shape of a rectangle.

Krenz requested a variance to enable it to fill up, grade, and seed from south to north area number three (the center area) at the site. The area is underlain by both recent and old deposits. Area number one (north and west area) and area number two (the southern area) would also be graded and seeded. Specifically, Petitioner proposed (Ex. "G"):

"Area 1 - the area consists of approximately 14 acres of this site and is located generally on the south-westerly portion with a border or boundary extending generally around the entire property. The lands in this area have either been filled to the practical limit or consist of areas which will not be filled but which will be re-excavated for cover material or graded for drainage.

This area requires final reinforcement of the existing temporary cover, additional grading and filling with earth material for drainage, the preparation for and development of a seed-bed, together with final seeding. Much of this area may be developed for final seeding in the Spring of 1975.

"Area 2 - This area consists of approximately 5 acres and is located generally along the southerly and south-easterly portion of the property. The land has all been previously stripped with gravel removal; and some leveling and restorations, using strip material, has taken place in the past. Remaining portions of this area are currently being excavated and used for cover material.

The work to be done in this area will consist of a small area of filling and covering with waste material, together with the final grading of the completed excavated area. After filling, covering and final grading of unfilled areas is complete, a seed-bed must be developed and final seeding accomplished. It is probable that a portion of this area must be used as a haul road for obtaining materials for cover from the southerly off-site area up to the point of final closing of the site.

"Area 3 - Area consists of approximately 10 acres. This area is currently underlain by old waste-fill areas with varying degrees of cover. Part of the area used in the

past several years under more modern regulations contains a considerable amount of cover material.

The area will require filling with waste and proper temporary cover. The work should be accomplished by starting in the southerly area and moving the fill operation northerly using adequate temporary cover. Final operation of the closing of the site consists of grading and final cover on this area. It is possible that a portion on the southerly end may be finally graded for the seed-bed and cover crop planted in the Spring of 1976."

Approximately 90,000 cubic yards of fill are added to the site each year; 72,000 of this is residential refuse (R.49, 150).

Petitioner's argument for a variance was based on its contention that its plan for closing the site was the most environmentally sound method of minimizing leachate problems at the site, as well as the most economically advantageous procedure for all persons affected by the site's closing. Petitioner admitted that the possibility of leachate existed at the site (R. 78). Agency evidence substantiated this admission (Agency Ex. E). It was established that leachate was just as likely to be caused by prior dumping materials as from future operations (R. 191). Krenz's program is designed to increase the water flow off the site and avoid leachate problems by grading, seeding, and addition of an impervious cover (R.46, 48). Petitioner estimated that its plan would only allow six inches of annual rainfall to percolate through the site (R. 50). The average annual rainfall in the area is about 36 inches. A witness for the Agency admitted that if the proposed plan were carried out, the policy of the regulations to minimize leachate and pollution would be achieved (R. 191), but added that the program might not eliminate the water pollution threat (R.192).

Three wells (P-1, P-2, and P-3) were drilled on the site to test for concentration of harmful contaminants resulting from the operation of the site. Lead concentrations of 0.74 ppm, 1.34 ppm, and 0.55 ppm were found. These levels are higher than would normally be expected (R. 189). It was not known whether these concentrations could have resulted from Petitioner's recent activities (R. 191). The evidence established that chemical and explosive wastes are not dumped at the site (R.149). No testing wells were drilled off the site. The closest drinking water source is a well one-quarter of a mile from the site. No leachate problem is indicated at this nearby well and the proposed closing plan is not expected to adversely affect this well or other wells now in use (R. 117).

Petitioner introduced evidence to show that it was not economically feasible to eliminate the potential pollution problem by removing the twenty acres of refuse and installing an impervious liner in the bottom of the entire gravel pit (R.79). The possibility of the new refuse's leaching could be lessened if bricks or concrete were used as fill in area three (R.52), but such materials are not available in sufficient quantities outside of the Chicago area (R. 153).

Testimony was offered to show that an immediate closing of the site would impose financial burdens on the Petitioner, the community, and local haulers. Petitioner stated that closing the landfill would mean raising rates substantially with the possibility of going out of business (R. 153). To offset its costs of properly closing the site, it desired to keep operating. An official from Cary (population 4,800) believed that closing the site would increase pick-up costs to residents of that community (R. 104). It is hoped that by the time the proposed closing plan is completed, a county landfill will be operating (R. 107). Three area haulers testified that if the site were closed, higher rates would be necessary resulting in business uncertainty (R. 206, 208). There was some evidence that hauling refuse to a nearby landfill involved less cost than hauling to the Krenz site, but the location, size, and availability of this site was not examined by the parties (R. 206).

We grant the variance from Rule 202(b)(1) of Chapter Seven and Section 21(e) of the Act from December 6, 1974, to and including December 5, 1975. Petitioner indicates on pages 18 and 19 of its March 5, 1975, Brief that it can substantially comply with the Agency's Recommendations on page 8, paragraph 15, of its January 29, 1975, submission. Proper final cover, grading and seeding to minimize percolation of rainwater through the landfill is especially important. We are satisfied that Petitioner is making good faith efforts to minimize any pollution effects from current and past dumping practices. It is of utmost importance that proper environmental management be carried out to limit as much as practically possible deleterious effects from past management practices. While we realize that granting this variance will not guarantee avoidance of all environmental problems, it represents the best solution to an intractable situation. Conscientiously carrying out the Order in this case will be an important consideration if Petitioner applies for another variance in late 1975. Based on the facts and circumstances of this case, it would impose an unreasonable hardship on Petitioner to deny the variance here.

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

ORDER in PCB 74-387

IT IS THE ORDER of the Pollution Control Board that:

1. Krenz Trucking, Inc. violated Rule 202(b)(1) of the Solid Waste Regulations and Section 21(e) of the Act by operating its solid waste management site without an Agency Operating Permit from July 27, 1974, until and including October 25, 1974.

2. Krenz Trucking, Inc. shall pay a penalty of \$350.00 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.

ORDER in PCB 74-457

Petitioner, Krenz Trucking, Inc. is hereby granted a Variance from Rule 202(b)(1) of the Solid Waste Regulations and Section 21(e) of the Act from December 6, 1974, to and including December 5, 1975, subject to the following conditions:

1. Petitioner shall carry out the Schedule of Construction Operations for Completing and Closing Landfill Site as set out on pages 4 and 5 in Resp. Ex. 11 (Ex. "G") according to its terms and timetables, except as modified by other conditions of this Order set out below.

2. No further refuse disposal activities shall be conducted in the areas referred to as Area #1 and Area #2.

3. Certain work (namely reinforcement of existing temporary cover, additional grading for drainage, preparation and completion of a seed-bed, together with final seeding) shall be completed on Area #1 by June 1, 1975.

4. Certain work (namely covering and final grading of the completed excavated area, and development of a seed-bed) shall be completed on Area #2 by September 1, 1975.

5. Best efforts shall be made to complete filling or covering work on Area #3 by December 5, 1975.

6. No hazardous or liquid wastes shall be accepted at the site.

7. Petitioner shall take all steps necessary to prevent leachate from leaving the site and to ensure the protection of ground-water in the area from leachate contamination, including but not limited to the following procedures:

(a) Cover all filled areas with a good and relatively impervious cover and plant proper cover crop which will consume relatively large amounts of surface water and prevent erosion,

(b) Establish the fill and subsequent cover to such elevations as to direct surface water and precipitation away from the site in natural watercourses, thus preventing the entrance of such water into the filled area with the resultant reduction in leachate production, and

(c) Install two monitor wells off the site at locations designated by the Agency (assuming permission of the land owners involved) to monitor and test underground water parameters and to ascertain if any adverse environmental impact was resulting from the landfill operation as conducted. If such adverse impact is indicated, Petitioner will cease operations within 60 days unless

a further variance for such continued operations is adopted by the Board.

8. Petitioner shall submit bi-monthly progress reports to the Agency detailing its progress in completing the site and complying with the above conditions. The first report is due June 1, 1975, and shall be mailed to Environmental Protection Agency, Division of Water Pollution Control, Control Program Coordinator, 2200 Churchill Road, Springfield, Illinois 62706.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 24<sup>th</sup> day of April, 1975, by a vote of 4 to 0.

  
Christan L. Moffett