

On June 2, 1975, the City of Pekin commenced a comprehensive study of its solid waste collection and disposal operations. As a result of that study, Pekin ceased dumping any material at the site in question as of November 12, 1975. Although the site had not been completely closed as of the date of hearing, (R.10), it was expected that all operations on the site, including dumping by others, would be eliminated within two to four weeks (R.86).

Although not stipulated to, the principal issue of fact in this case -- the lack of an operating permit -- was never an issue at the hearing in this matter. The unanswered Request for Admissions, submitted at the hearing without objection (R.5), is conclusive as to the fact that Pekin operated its solid waste management site during the period in question, and that it did so without the required permit.

Nor does the Board have any problem finding a violation based on that fact. Balancing the social and economic value of this unpermitted solid waste management site, and the potential for injury to the environment and public health, in light of the technical practicability and economic reasonableness of ceasing such unpermitted operation as demonstrated by Pekin's transfer of its operations to another site, we have no difficulty in finding such a violation.

The only real issue present under Section 33(c) of the Act, which we must examine in finding such a violation, is the suitability or unsuitability of this location for use as a solid waste management site. Although the City of Pekin did, on cross examination, question the Agency's determination as to the site's unsuitability (R.71), Pekin also stipulated to admission of the Agency's rejection letter regarding the April 2, 1975 permit application. The Agency there denied Pekin's application based on a June 18, 1974 preliminary hydrologic evaluation by the Illinois Geological Survey, showing that Pekin's site is located in an area where gravel constitutes the underlying soil to a depth of 75 feet, at which point bed rock began. In any event, because the site is no longer in operation, its present suitability for use as a solid waste management site is no longer a significant issue.

The only remaining question is that of the proper remedy in this situation. At hearing, the Attorney General closed with a request that a significant monetary penalty be assessed, and amended the prayer for relief in the Complaint to ask that the Board require that Pekin's site be finally closed, and covered, in compliance with a closure plan approved by the Agency. In light of Pekin's cessation of operations on the site after the Complaint was filed, and testimony presented at hearing by Pekin, that amendment was proper under our Procedural Rules.

The City of Pekin concentrated its case on the need for and expense of covering its site in conformity with Board regulations. To that end, it brought three witnesses: the Mayor, the City Engineer, and the Corporation Counsel. Pekin attempted to show that to cover the site with two feet of suitable material, as required under our regulations, and so as to optimize surface drainage and prevent surface water infiltration with consequence of leachate pollution of the water table or the Illinois River, would require approximately 132,000 cubic yards of fill, to be brought a distance of five or ten miles, at a completed cost of approximately \$6 per cubic yard (e.g., R.19). The Mayor of Pekin testified that the total cost of such cover on the site, amounting to \$792,000, when compared to Pekin's total 1974 tax levy of \$2,800,000, would present the city with an impossible burden (R.31). The Mayor feared that either city services would have to be cut, or the city's present tax rate of \$1.94 per \$100 assessed valuation (presently totaling \$147 million), would require a 50 cent increase (R.32).

The City's position in this regard was without foundation. Cross examination by the Attorney General showed that the City was unclear as to whether the entire site would need two feet of cover, or as to whether prior applications of daily or intermediate cover would apply as against the final cover requirements (e.g., R.26). And, although Pekin did question the source of the Agency's judgement, it is clear that there is a real danger of leachate pollution from this site.

We shall require that Pekin properly close and cover this site. The stipulated exhibits indicate that Pekin has known of the cover requirement for some years (Stip. Ex. A-K). Respondent stated that they had been covering the site since 1965, but that the cover was not that which would be permitted under our Rules (R.40). Nor, as the City claims, was the enactment of our regulations in 1973 a serious additional requirement in the area of site cover. In the areas of both subsurface soil composition and cover requirements, the Old Rules of the Department of Health contained requirements substantially similar to those of this Board. Illinois Department of Public Health, Division of Sanitary Engineering, Rules and Regulations for Refuse Disposal Sites and Facilities, April, 1966, Rules 4.02, 5.07.

Pekin seemed to assume at the hearing that its entire site would need two feet of cover, and that significant areas would need additional fill. The Attorney General showed that this was not necessarily true. We trust that in presenting a closing plan to the Agency, Pekin will minimize its own costs, with maximum effectiveness in protecting the environment.

Because the site in question has been closed, and this Order provides no shield from future enforcement regarding pollution which may result from this site, we will impose no penalty in this matter.

Apparently as a result of this enforcement case, Pekin has ceased using its unpermitted site, and has commenced using another private site at an increase in cost, and presumably in conformity with the Board's Regulations.

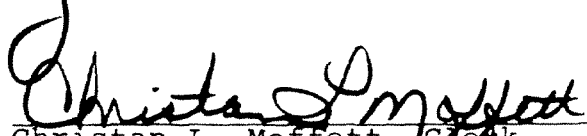
This Opinion constitutes the findings of fact and conclusions of law of the Board in this matter.

ORDER

IT IS THE ORDER OF THE POLLUTION CONTROL BOARD that:

1. Respondent City of Pekin is found to have operated a solid waste management site in Tazewell County without the required permits from the Environmental Protection Agency, in violation of Section 21(e) of the Environmental Protection Act and Rule 202(b)(1) of Chapter 7: Solid Waste of the Pollution Control Board Rules and Regulations.
2. Respondent shall cease and desist all solid waste disposal activities on said site, and shall close said site in conformity with the Rules and Regulations of this Board, pursuant to a plan of closure prepared by Respondent and acceptable to the Environmental Protection Agency. Such plans shall be submitted to the Environmental Protection Agency within thirty (30) days of the date of this Order.
3. Respondent shall, if determined by the Agency, provide and maintain leachate monitoring sites; and shall report the results of such monitoring to the Agency on a quarterly calendar basis.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 11th day of February, 1976 by a vote of 4-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board