

ILLINOIS POLLUTION CONTROL BOARD
November 10, 1976

PEOPLE OF THE STATE OF ILLINOIS,)
)
 Complainant,)
)
)
 v.) PCB 76-6
)
)
JOHN TARKOWSKI,)
)
)
 Respondent.)

HONORABLE WILLIAM J. SCOTT, Attorney General, by Mr. James Dobrovolny, appeared on behalf of Complainant;
MR. JOHN TARKOWSKI, Respondent, appeared pro se.

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

On January 6, 1976, the Attorney General on behalf of the People of the State of Illinois (People) filed a Complaint against John Tarkowski, alleging violations of Sections 21(b) and 21(e) of the Environmental Protection Act (Act) and Rules 202(b) and 305(c) of the Solid Waste Regulations, Chapter 7 of the Board's Rules and Regulations. Evidence depositions were taken by Complainant in this matter on May 25, 1976 in Lake Zurich, Illinois. Mr. Tarkowski, although notified, did not attend. A hearing in this matter was held on June 11, 1976, in Waukegan, Illinois. Mr. Tarkowski appeared pro se. Several citizen witnesses testified at the hearing.

Specifically, the Complaint in this matter alleges that Mr. Tarkowski operated a refuse disposal site in Wauconda, Lake County, Illinois without an Operating Permit and that he failed to apply final cover to the site. Mr. Tarkowski's address in Wauconda

is 431 South Lakeview Drive. This address is also known as Lots 38 and 39 in Robert Bartlett's Lakeland Estates. The area in which Mr. Tarkowski resides and in which the site is allegedly operated is entirely residential in nature. A question of whether Mr. Tarkowski is presently the true owner of the property was raised at the hearing. However, Mr. Tarkowski admitted that he has total control of the property and access to it (R.272).

An employee of the Environmental Protection Agency (Agency) testified during the taking of the evidence deposition that he first visited the site on November 20, 1973 (dep. p.6). At that time, he observed plasterboard, wood, metal, landscape wastes, roofing materials, and other materials covering an area of about one and one-half acres in size. On March 6, 1974, the Agency again observed similar materials on the site. Most of the material was deposited in standing water in a low swampy area. (Wengrow dep. p. 11-12). Mr. Wengrow of the Agency also observed a hedgerow of landscape wastes extending 100 feet back from Mr. Tarkowski's driveway. On March 11, 1976, after the filing of the Complaint, the Agency again inspected the site and observed plasterboard, wood, metal and landscape wastes deposited in a swampy area. The berm of landscape wastes extended 200-300 feet along Mr. Tarkowski's property. (Wengrow dep. p.13). In addition, Mr. Wengrow observed 70-80 barrels on the site, most of which apparently contained some sort of oil or other liquid.

Exhibits submitted by the People indicate that the Agency notified Mr. Tarkowski on December 5, 1973, that the conditions on his property may constitute violations of the Act and the Solid Waste Regulations. The Agency again contacted Mr. Tarkowski on March 20, 1976, and April 2, 1976, subsequent to the inspections noted above which again revealed violations of the Act and Regulations.

Several citizen witnesses residing in close proximity to the site in question testified at the hearing. Neighbors of Mr. Tarkowski have for several years observed trucks delivering various materials to Mr. Tarkowski's property, including building scraps, dry wall, discarded drums, brush and landscape waste clippings. (R.104, 136, 156, 217, 226, 235). One witness testified that he has observed a sign at the entrance to Mr. Tarkowski's property which reads "Fill Wanted" (R.180). A photograph submitted by the People verifies this observation. Witnesses testified that the berm of landscape wastes represents a potential fire hazard and that Mr. Tarkowski's property is very unsightly due to the various materials deposited thereon (R.137).

Mr. Tarkowski does not deny that he has deposited these various materials on his property. His defense, rather, is that the material is not "refuse" within the meaning of the Act and that, because he is depositing the material on his own property in an attempt to prevent a serious soil erosion problem, the permit and cover requirements of the Act and Regulations do not apply. In essence, he claims that the purpose of his activity is to protect, not destroy, the environment, and that, therefore, no violation has occurred.

Mr. Tarkowski testified that vast devastation and flooding have occurred on his property, creating a serious erosion problem and mosquito breeding grounds (R.242, 253). He alleges in his Reply Brief that the flooding and erosion are due to overflow and underground seepage from an "illegal" lake and dam in the subdivision 18 feet above the level of his property. Mr. Tarkowski contends that he is attempting to fill in his property and prevent erosion by depositing dry wall on the site.

In further defense of his actions, Mr. Tarkowski indicates in his Reply Brief that the landscape wastes on his property are being used to make a silt dam to prevent erosion and to afford privacy from onlooking neighbors (R.279) and that logs on his property are used in his fireplace in the winter. He further alleges that the barrels are being welded together to create a culvert to be used as a drainage ditch.

Section 21(e) of the Act provides that no person shall:

(e) Conduct any refuse-collection or refuse-disposal operations, except for refuse generated by the operator's own activities, without a permit granted by the Agency...

Section 3(k) of the Act defines "refuse" as "garbage or other discarded materials..."

The Board finds that although Mr. Tarkowski may have a specific purpose for depositing dry wall wastes, building scraps, landscape wastes and various other materials upon his property, these materials are "discarded materials" and, therefore, "refuse" within the meaning of the Act. They are merely deposited on the property and are intended to remain there in their present state. Mr. Tarkowski's collection of said refuse on his property without a permit constitutes a violation of Section 21(e) of the Act and Rule 202(b) of the Solid Waste Regulations. Although Mr. Tarkowski's intentions may have been to enhance rather than damage the environment, we have held in the past that intentions are immaterial to a finding of a violation itself, EPA v. Village of Karmak, 16 PCB 13,15, and that the permit system is necessary to ensure that refuse disposal is carried out in an environmentally sound manner, EPA v. City of Rushville, 18 PCB 136,138.

Mr. Tarkowski claims that the metal drums deposited on his property are being welded together to form a culvert to be used as a drainage ditch. Photographs submitted by the People verify his contention. The People presented no evidence demonstrating that Mr. Tarkowski has been inactive in his construction of this culvert and that, therefore, the drums may accurately be described as "discarded materials." The Board, therefore, finds that at the present time the metal drums are not refuse within the meaning of the Act. Similarly, although the Board finds that the berm of landscape waste is refuse, any logs which Mr. Tarkowski is storing on his property for use in his fireplace are not refuse within the meaning of the Act.

The Board notes that the Complaint in this matter also charged Mr. Tarkowski with violation of Section 21(b) of the Act and Rule 305(c) (final cover) of the Solid Waste Regulations. As to the alleged violation of Rule 305(c), the Board finds that no evidence was presented which indicates that the site has been closed and that Mr. Tarkowski's activities have ceased. In fact, exhibits submitted indicate that neighbors of Mr. Tarkowski observed trucks delivering landscape waste, dry wall, and other materials well after the Complaint in this matter was filed (Ex. 30, 35). Because we have no evidence that activities have ceased, we are unable to find that the final cover requirement was applicable at the time of the Complaint. The allegation that Mr. Tarkowski violated Rule 305(c) is, therefore, dismissed.

Furthermore, the Board has held that the activities which constitute a violation of Section 21(e) of the Act, operating without a permit, do not constitute a violation of Section 21(b). EPA v. City of St. Charles, 16 PCB 369; EPA v. Krenz Trucking, Inc., 16 PCB 439. The allegation of violation of Section 21(b) is hereby dismissed.

Although immaterial to a finding of violation, Mr. Tarkowski's intentions as well as the factors listed in Section 33(c) of the Act must be considered by the Board in fashioning a remedy. Section 33(c) requires the Board to consider the extent of injury to the public, the economic and social value of the source, suitability of location, and the technical feasibility and economic reasonableness of correcting the problem.

As noted earlier, the area in which Mr. Tarkowski's property is located is entirely residential. The site has been described by other residents as unsightly and as a potential fire hazard due to the large berm of landscape wastes (R.77, 137). Mr. Tarkowski, as pointed out earlier, alleges that he is attempting to prevent an erosion problem caused by an "illegal" lake. However, a soil expert testified on behalf of the People that Mr. Tarkowski's property is in a flood plain, that the site in question consists mainly of Houghton soil, which is very unstable, and that the site is unsuitable for a landfill because the fill material would continue to settle and may never stabilize (Nargang dep.). Although the Board recognizes that Mr. Tarkowski does face an erosion problem, his method of solving the problem, depositing refuse in an unstable area, has the potential for creating more environmental damage than it alleviates. No evidence was submitted on the cost of clearing the site of all refuse. The Board notes, however, that Mr. Tarkowski is unemployed and was unable to afford counsel to represent him in this matter.

The Board recognizes that Mr. Tarkowski faces a serious erosion problem. The Board will order Mr. Tarkowski to cease and desist his refuse collection activities but will give him the option either of clearing the property of all refuse or of applying for and obtaining the required operating permit within 120 days of the date of this Order.

As to the question of penalty, the Board notes that Mr. Tarkowski was warned several times by the Agency that his activities were in violation of the Act and Regulations. He chose to continue. Such delay and the resulting environmental damage warrant the imposition of a penalty. However, the Board has held that a Respondent's financial status is relevant to the size of a penalty. EPA v. Aluminum Processing Corp., PCB 335 (1973). Because of Mr. Tarkowski's apparent lack of funds, the costs he will incur in either clearing his property or obtaining a permit, and his intent to prevent an erosion problem, the Board finds that a low penalty of \$75.00 is appropriate.

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. Mr. John Tarkowski is found to have violated Section 21(e) of the Act and Rule 202(b) of the Solid Waste Regulations.
2. For said violation, Mr. Tarkowski shall within 45 days of the date of this Order pay a penalty of \$75.00, payment to be made by certified check or money order to:

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

3. Mr. Tarkowski shall cease and desist his refuse collection activities.
4. Within 120 days of the date of this Order, Mr. Tarkowski shall either clear his property of all refuse or apply for and obtain an operating permit from the Agency.
5. The allegations that Mr. Tarkowski violated Section 21(b) of the Act and Rule 305(c) of the Solid Waste Regulations are hereby dismissed.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 10th day of November, 1976 by a vote of 50.



Christan L. Moffett, Clerk
Illinois Pollution Control Board