

ILLINOIS POLLUTION CONTROL BOARD
March 15, 1979

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
v.) PCB 78-29
)
I. D. CANNON, d/b/a)
CANNON CONSTRUCTION COMPANY,)
)
Respondent.)

MR. REED W. NEUMAN, ASSISTANT ATTORNEY GENERAL, APPEARED ON BEHALF OF THE COMPLAINANT.

MR. I. D. CANNON APPEARED PRO SE.

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

This matter comes before the Board on the February 6, 1978 Complaint brought by the Illinois Environmental Protection Agency ("Agency"). On March 14, 1978, the Complainant requested leave to file an Amended Complaint, and the Board granted this motion on March 30, 1978. On April 11, 1978, the Complainant requested leave to file a Second Amended Complaint, and the Board granted this motion on April 27, 1978. Count I of the Second Amended Complaint alleged that, from November 3, 1976 until the date of filing of the Second Amended Complaint, the Respondent operated a solid waste management site (the "site") without the requisite Agency Operating Permit in violation of Rule 202(a) of the Chapter 7: Solid Waste Regulations and Section 21(e) of the Illinois Environmental Protection Act ("Act").* Count II alleged that, from November 3, 1976 until the date of filing of the Second Amended Complaint (including 10 specified dated during this time period), the Respondent failed to place adequate daily cover on all exposed refuse in violation of Rule 301 and Rule 305(a) of Chapter 7: Solid Waste Regulations and Section 21(b) of the Act. Count III alleged that, from November 3, 1976 until the date of filing of the Second Amended Complaint (including 5 specified dates during this time period), the Respondent failed to place adequate final cover over portions of the site in violation of Rule 301 and Rule 305(c) of Chapter 7: Solid Waste Regulations and Section 21(b) of the Act. A hearing was held on August 7, 1978.

*Count I of the Second Amended Complaint erroneously charges the Respondent with a violation of Solid Waste Rule 202(a). Rule 202(a) is only applicable to new solid waste management sites. The Respondent has, in a prior Variance Proceeding (PCB 77-57), obtained a Variance from Solid Waste Rule 202(b) and it is clear that the site is an existing one. Hence, Count I is fatally defective and is hereby dismissed.

At this hearing, Complainant's Group Exhibits 1, 2, and 3 were admitted into evidence. Complainant's Group Exhibit 1 is entitled "First Request for Admission of Facts and Genuineness of Documents" and is dated April 4, 1978. The Respondent did not respond to this request for admissions, and thus each of the matters of fact and the genuineness of each document therein is hereby deemed to be admitted under Rule 314(c) of the Board's Procedural Rules. Complainant's Group Exhibit 2 is a return receipt requested, certified mail card, and Complainant's Group Exhibit 3 consists of various Agency inspection reports pertaining to the Respondent's site.

The Respondent operated a solid waste management site in Adams County, Illinois on which demolition wastes such as brick, lumber and concrete were deposited. At the hearing, the Complainant's only witness was Mr. John Taylor, an Agency employee whose duties include the inspection of solid waste disposal sites. Mr. Taylor testified that he visited the Respondent's site in the Quincy area on five different occasions. (R. 10). Mr. Taylor indicated that the first time he visited the site on January 3, 1977, there was some uncovered demolition waste consisting of boards, bricks, and building debris located on less than half an acre of the property. (R. 10-11). However, the most recent time that Mr. Taylor visited the site, he noticed only "a relatively small area of uncovered refuse." (R. 12). It was also noted that only demolition debris was observed on the property (i.e., no other type of refuse was on the site), and that no streams or other bodies of water were near the Respondent's site. (R. 12-13).

Mr. I. D. Cannon was called as a witness on his own behalf. He testified that he operates the Cannon Construction Company with two other partners and is engaged in the demolition of existing structures in the Quincy area. (R. 18-21). On August 18, 1977, the Board granted the Respondent a Variance from the Board's Solid Waste Regulations in PCB 77-57, subject to the condition that he obtain a permit application and submit a properly completed application form to the Agency. Mr. Cannon stated that his engineer advised him not to cover anything until he got the permit application, so that the engineer would know about the trenching and other vital details. (R. 17). Mr. Cannon testified that "We asked for a permit application in April of '77. We received it in September of '77 at which time the weather was bad. We didn't get anything done. Now, we would like to finish the landfill, cover it, quit operations altogether." (R. 17-18).

Moreover, Mr. Cannon testified that he wants to properly cover and close the site, and perhaps sell the property. Any demolition debris generated from his construction operations will be hauled to an Agency-authorized landfill. (R. 19-26). The Respondent stated that the cost of placing final completion cover on his site, as estimated by the last engineer he talked to, will be substantial by the time the equipment and fencing is obtained. (R. 20). The Agency's position is that the Respondent's plans to cover and close the site are acceptable, provided that a plat map is filed pursuant to Rule 318(c) of Chapter 7: Solid Waste Regulations. (R. 29).

In evaluating this enforcement action, the Board has taken into consideration all the facts and circumstances in light of the specific criteria delineated in Section 33(c) of the Act. Thus, the Board will require that the Respondent promptly place suitable final cover on the site; properly close the site; and file the requisite plat map in accordance with the Board's Solid Waste Regulations and the Act. The Board finds that the Respondent has violated Rules 301, 305(a) and 305(c) of Chapter 7: Solid Waste Regulations and Section 21(b) of the Act. The Board hereby imposes a penalty of \$300.00 against the Respondent.

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


ORDER

It is the Order of the Illinois Pollution Control Board that:

1. The Respondent has violated Rules 301, 305(a) and 305(c) of Chapter 7: Solid Waste Regulations and Section 21(b) of the Act.
2. Count I of the Second Amended Complaint is hereby dismissed.
3. The Respondent shall immediately cease and desist all further violations.
4. Within 90 days of the date of this Order, the Respondent shall place suitable final cover on the site; properly close the site; and file the requisite plat map in accordance with the Board's Solid Waste Regulations and the Act.
5. Within 45 days of the date of this Order, the Respondent shall pay a penalty of \$300.00, payment to be made by certified check or money order to:

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

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 15th day of March, 1979 by a vote of 5-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board