

ILLINOIS POLLUTION CONTROL BOARD
January 6 , 1977

ENVIRONMENTAL PROTECTION AGENCY,)
)
 Complainant,)
)
 v.) PCB 75-487
)
 CITY OF MOUNT CARMEL, a municipal)
 corporation,)
)
 Respondent.)

Mr. Richard Cosby, Assistant Attorney General, appeared for the Complainant.
Mr. Robert M. Keenan, Jr. appeared for the Respondent.

OPINION AND ORDER OF THE BOARD (by Dr. Satchell):

This matter comes before the Pollution Control Board (Board) upon a complaint filed December 19, 1975 by the Environmental Protection Agency (Agency). An amended complaint was filed on January 19, 1976. The amended complaint alleges that the City of Mount Carmel operates a refuse disposal site located in Section 21, Township 1 South, Range 12 West, in the County of Wabash, Illinois; and that Respondent caused or allowed the operation of its refuse disposal site without an operating permit in violation of Rule 202(a) of the Solid Waste Regulations (Regulations) and Sections 21(b) and 21(e) of the Environmental Protection Act (Act).

The Board has held on several occasions that a violation of a permit requirement as of Rule 202(a) is not the proper basis for an allegation of violation of Section 21(b) of the Act. The allegation of violation of Section 21(b) of the Act is dismissed.

A hearing was held concerning this matter in Mount Carmel, Illinois on February 18, 1976. The site in question is in the Rose Hill Cemetery. In the cemetery there is an erosion problem (R. 26). Retaining walls had to be built to keep some grave sites from washing down (R. 26). Two trees were undermined and had to be cut down because their roots were exposed and they died (R. 26). The City was trying to build up the ditch or gully to create a grass waterway (R. 27, 28). Dirt and refuse was brought in to fill in the area, then the City was going to place topsoil on it and seed it (R. 28). The

refuse to be used was generated in the City and consisted of bricks, concrete, and the sweepings off the street, which is mostly gravel and dirt (R. 28). Landscape waste produced as a result of a storm was also placed in the area (R. 28). This waste was in a large quantity and included the trunks of large trees (EPA Ex. 4, City Ex. C).

The City contends that the refuse being used was self-generated, allowing the City to be covered by the exemption in Section 21(e) of the Act. The Board has rejected this interpretation of the Act as a circumvention of the permit system not intended by the legislature, EPA v. City of Pontiac, 18 PCB 303 (1975). The Board does find that the City of Mount Carmel was in violation of Rule 202(a) of the Regulations and Section 21(e) of the Act.

Before making a final determination in this matter the Board must consider the factors of Section 33(c) of the Act. Respondent did receive a Development Permit for this site on December 24, 1975 (R. 31). The permit allows disposal of natural-occurring earth materials plus brick, concrete, broken pavement and masonry rubble (R. 18). Daily and intermediate cover requirements are waived by the permit (City Ex. A). The Agency at the time of the hearing had not determined any environmental damage (R. 24). City Exhibits "A" and "B" show that most covering of the refuse has taken place but that some landscape waste does remain uncovered (R. 35). Uncovered landscape waste is a fire hazard and has the potential to harbor vectors (R. 18, 19). Little or no actual damage has been assessed at the site; however, potential for damage is the reason the permit system exists, to provide the forethought necessary to prevent pollution. The site here is not in issue. The refuse was placed to prevent erosion to save the cemetery site from further damage. There is also no question as to the positive social and economic value of the cemetery to the people of Mount Carmel. The fact that the City has received a development permit and work is being done to remedy the situation shows that compliance is economically and technically feasible.

When the City first attempted to prevent the erosion the area was not considered a solid waste management site by the City. After notice from the Agency the City has now received the appropriate permit. For these reasons the Board finds a penalty is not necessary for an aid to enforcement. The City shall be required to complete the cover of any landscape waste presently at the site and shall not place any landscape waste at the site in the future. The City shall cease and desist any further violations of the Act or the Regulations.

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

ORDER

It is the Order of the Pollution Control Board that:

1. The City of Mount Carmel is found to have been in violation of Rule 202(a) of the Solid Waste Regulations and Section 21(e) of the Act.

2. The allegation of violation of Section 21(b) of the Act is dismissed.

3. The City of Mount Carmel shall cease and desist any further violations of the Board's Regulations or the Environmental Protection Act. Any landscape waste presently at the site shall be covered within 45 days of this order and no other such waste shall be deposited at the site.

Mr. Young dissents.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 6th day of January, 1977 by a vote of 3-1.



Christan L. Moffett, Clerk
Illinois Pollution Control Board