

ILLINOIS POLLUTION CONTROL BOARD
September 15, 1976

ENVIRONMENTAL PROTECTION AGENCY,)
)
 Complainant,)
)
 v.) PCB 76-59
)
 RALPH FISCHBACH and FLOYD)
 FISCHBACH,)
)
 Respondents.)

MR. Richard W. Cosby, Assistant Attorney General, appeared on behalf of Complainant.
Mr. Ronald O. Roeser appeared on behalf of Respondents.

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

This matter comes before the Pollution Control Board (Board) upon a complaint filed by the Environmental Protection Agency (Agency) on March 1, 1976. The complaint alleges that Ralph Fischbach and Floyd Fischbach own and operate a refuse disposal site located on approximately five acres in section 24 of Township 42 North, Range 7 East of the Third Principal Meridian, Kane County, Illinois. The complaint further alleges that Respondents beginning July 27, 1974 and continuing every day of operation to the date of filing have operated the waste management site without an operating permit in violation of Rule 202(b)(1) of the Chapter 7: Solid Waste Regulations (Regulations) and Sections 21(b) and 21(e) of the Environmental Protection Act (Act), and that on seven named dates Respondents failed to place a compacted layer of six inches of suitable material on all exposed refuse at the end of each day of operation in violation of Rule 305(a) of the Regulations and Section 21(b) of the Act.

The Board has stated many times that a Section 21(b) violation is not properly based on operating without a permit, Environmental Protection Agency v. E. & E. Hauling, Inc. 16 PCB 215 (1975). The allegation of a violation of Section 21(b) stemming from operating without a permit is dismissed.

A hearing in this matter was held on May 14, 1976. At the hearing there was testimony from Kenneth P. Bechely, an Agency employee, and both Respondents.

Evidence was presented concerning visits of Mr. Bechely to the site on four occasions July 11, 1974, July 31, 1974, August 14, 1974 and August 19, 1975 (R. 8, 17, 18, 19). The wastes at the site include pottery wastes, brickbat, plasterboard, cardboard and some plastic (R. 10, 16). The pottery was mostly broken molds which is basically inert material (R. 11). On the July 11, 1974 visit, the amount of plasterboard was possibly as much as 40 percent of the total volume dumped (R. 14). If the plasterboard is disposed of in wet conditions it will break down into its various components, primarily calcium and sulfate (R. 15). If deposited in large amounts there can be environmental degradation to nearby water courses and ground water (R. 15). The area of the fill is low and the water table is at times high (R. 15).

On the August 14, 1974 visit Mr. Bechely did not note any plasterboard or wallboard on his report (R. 18). On August 19, 1975, Bechely observed mostly brickbat and pottery waste (R. 21, 24). Also there was no cover for fill that had been deposited for some time (R. 27). Mr. Bechely estimated the total volume to be between 100 and 150 cubic yards of material (R. 26). At any one time the exposed area is probably less than half an acre (R. 28). The Fischbach Farm Implement Company is on the site (R. 29, 30). There are some other buildings to the west of the Fischbach brothers' farm implement site (R. 30).

Mr. Bechely observed that the material was placed at irregular intervals and that spreading and compaction was done at irregular intervals (R. 31). The cover that was applied to the older areas of the fill was satisfactory (R. 38). Mr. Bechely stated that on the dates of his visits he observed no environmental harm but did not know about long term effects (R. 45).

Floyd W. Fischbach testified to the fact that he and his brother applied for a permit on August 30, 1974, and in 1975 and 1976 (R. 52, 54). Currently they do have a permit application before the Agency (R. 54, 55). The Agency has rejected two applications because they were made on the wrong forms which the Agency had sent out. The Fischbachs claim to have never received the first denial (R. 53, 54, 77). The Agency has also asked for more information on all the applications (R. 77, 78).

The materials being dumped on the Fischbachs' property are molds from a pottery and material that the Illinois Highway Department and the Kane County Highway Department bring in from highway repairs (R. 57). The area being filled slopes down to an existing creek (R. 58). The Respondents would like to bring it up to a level that can be used for parking their equipment (R. 58). The area is being filled with three to four feet of material (R. 60). Without the fill the area is of no use (R. 60, 61). The loads of material are small and delivered at irregular intervals (R. 61). The highway departments are bringing in some dirt (R. 63).

Respondents have never given permission to place drywall or plasterboard on their property; however, someone brought these materials in at night on three or four occasions without permission (R. 65, 66). Respondents called the police who eventually found the individual and since then there have been no reoccurrences (R. 66, 67). Mr. Fischbach states he has never had any complaints from adjoining landowners (R. 69).

Ralph A. Fischbach testified only to verify the testimony of his brother, Floyd Fischbach (R. 80).

The facts before the Board are undisputed. Respondents have brought in refuse from the pottery plant and the highway departments on a regular basis to raise the level of the outer edge of their land. During a short period in 1974 an unknown person dumped plasterboard in Respondents' fill area. The Board finds Respondents in violation of operating a waste management site without an operating permit, Rule 202(b)(1) of the Regulations and Section 21(e) of the Act. The Board also finds Respondents in violation of Rule 305(a) of the Regulations and Section 21(b) of the act for failure to place daily cover.

The Board must also consider the factors of Section 33(c) of the Act. In this case actual injury to the environment has not been established; however, as Mr. Bechely pointed out it is difficult to determine what long term damage will result from a landfill. This is the purpose of the permit system, to protect the health and welfare of the population from shortsighted mistakes before they happen. Although there is not much information in the record as to site suitability, the Board finds the site appropriate. The technological feasibility of obtaining a permit in this situation is not a problem. Because of the use of inert material obtaining

a permit should not be a problem, upon the presentation of the proper information to the agency. Respondents have indicated that applying daily cover in this instance is not economically feasible (R. 75). The cost of hiring someone with the machinery every day would prohibit the Fischbachs from filling in their "backyard" (R. 75). The Board notes inert material may not need daily cover; however, any such judgment must be made by the Agency with the information available from permit applications and periodic inspections.

The Board finds that Respondents have violated the Regulations and the Act. Respondents have shown good faith. The Fischbachs have covered the area at various intervals (R. 75). They have also filled out all requested application forms from the Agency (R. 78). The landfill in question is small and would appear not to be a source of pollution. The Board finds that to protect the integrity of the permit system Respondents must obtain the required permit within 120 days of this Order. If a permit is not issued Respondents shall cease and desist further operation of the landfill and shall apply final cover pursuant to Rule 305(c) of the Regulations. In this case the Board finds that a penalty is not necessary to aid in the enforcement of the Act.

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

ORDER

It is the Order of the Pollution Control Board that:

1. Respondents are found to be in violation of Rules 202(b)(1) of the Solid Waste Regulations and Section 21(e) of the Act and Rule 305(a) of the Regulations and Section 21(b) of the Act.
2. The allegation of violation of Section 21(b) of the Act based on the Rule 202(b)(1) violation is dismissed.
3. Respondents shall obtain a permit from the Agency within 120 days of this Order. If the permit is not obtained Respondents will cease and desist further operation and final cover shall be placed in compliance with Rule 305(c) of the Solid Waste Regulations.

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 September, 1976 by a vote of 5-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board