

ILLINOIS POLLUTION CONTROL BOARD
April 8 , 1976

ENVIRONMENTAL PROTECTION AGENCY,)
)
 Complainant,)
)
 v.) PCB 75-359
)
 VILLAGE OF WINSLOW, an Illinois)
 municipal corporation,)
)
 Respondent.)

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

This case arises out of a Complaint filed by the Environmental Protection Agency (Agency) on September 11, 1975, alleging that Respondent Village of Winslow (Winslow) operated a solid waste management site in Stephenson County from July 27, 1974 without an operating permit in violation of Rule 202(b)(1) of the Illinois Pollution Control Board Rules and Regulations, Chapter 7: Solid Waste (Regulations) and in violation of Section 21(b) and Section 21(e) of the Environmental Protection Act, Ill. Rev. Stat. Ch. 111 1/2 §1028 (1973) (Act). A hearing was held in Freeport, Illinois on October 28, 1975 at which time a draft Stipulation and Proposal for Settlement (Stipulation) was read into the record. A fully executed Stipulation was filed with the Board on December 10, 1975 and is found adequate under Rule 333 of our Procedural Rules (EPA v. City of Marion, 1 PCB 591).

Winslow (population approximately 360) operates a refuse disposal site in the flood plain of the east branch of the Pecatonica River which accepts approximately 20 to 24 yards of garbage, domestic wastes, landscape wastes and demolition materials per week (Stip. p2).

The parties stipulate that Winslow has operated the refuse disposal site without an operating permit as alleged (Stip. p3) and agree to payment of a penalty of \$100.00 therefor; and, in addition, that Winslow apply for the requisite permits within 30 days and to cease operation of the site within 120 days unless an operating permit is issued by the Agency or a variance granted by the Board (Stip. p4). The parties further stipulated that future operations, pending permit or variance, shall be conducted in compliance with Rules 303 through 314 of the Regulations (Stip. p5).

On the basis of the above facts and the Stipulation, which constitutes the entire record in this case, we find that Respondent Winslow did violate Rule 202(b)(1) of the Regulations and Section 21(e) of the Act from July 27, 1974 until September 11, 1975, in the operation of its refuse disposal site. We further find that the stipulated settlement of \$100.00 constitutes a reasonable penalty for these violations.

That portion of the Complaint alleging violation of Section 21(b) must be dismissed. Section 21(b) reads:

(No person shall) Cause or allow the open dumping of any other refuse in violation of regulations adopted by the Board. [Emphasis added.]

An indispensable element of a charge alleging violation of Section 21(b) is the element setting forth the specific regulation allegedly violated. This regulation must relate to the manner or method in which the disposal site is operated. Since no regulatory violations were alleged in the charge excepting the permit violation, the Complaint is therefore defective as it concerns the alleged Section 21(b) violation. As was held in E & E Hauling, PCB 74-473, 16 PCB 215 (1975), a Section 21(b) open dumping charge is not properly based on an operating permit violation.

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

ORDER

IT IS THE ORDER OF THE BOARD that:

1. Respondent Village of Winslow is found to have operated its refuse disposal site in violation of Rule 202(b)(1) of the Board's Solid Waste Regulations and Section 21(e) of the Environmental Protection Act and shall pay a penalty of \$100.00 for such violations. Penalty payment by certified check or money order payable to the State of Illinois shall be made within 35 days of this Order to: Fiscal Services Division, Illinois Environmental Protection Agency, 2200 Churchill Road, Springfield, Illinois, 62706.
2. Respondent Village of Winslow shall apply for a solid waste management site operating permit from the Environmental Protection Agency within 30 days of the date of this Order.
3. Respondent Village of Winslow shall cease and desist from operating its refuse disposal site within 120 days of the date of this Order unless the requisite permit is issued by the Agency, or a variance applied for and granted by the Board.

4. Respondent Village of Winslow shall, during the period of application for a permit and/or variance, operate its refuse disposal site in compliance with Rule 303 through 314 of the Board's Solid Waste Regulations.

5. The portion of the Complaint alleging violation of Section 21(b) of the Act is dismissed.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 8th day of April, 1976 by a vote of 5-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board