

ILLINOIS POLLUTION CONTROL BOARD
October 14, 1976

ENVIRONMENTAL PROTECTION AGENCY,)
)
 Complainant,)
)
 v.) PCB 76-29
)
RONALD E. CARLSON,)
)
 Respondent.)

Mr. Steven Watts, Assistant Attorney General, appeared on behalf of the Complainant. Mr. Bufford W. Hottle, Jr. and Mr. William E. Nolan appeared on behalf of the Respondent.

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 January 29, 1976. The complaint alleges that Ronald E. Carlson operates, or causes to be operated, a solid waste management site located near Oquawka, Illinois in Section 35, Township 12 North, Range 5 West of the Fourth Principal Meridian, in Henderson County, Illinois, consisting of 39.7 acres, more or less. The complaint further alleges that Respondent operated or caused to be operated the solid waste management site before, on, and at all times after July 27, 1974 up to and including the date of filing including eight named dates or, alternatively the Saturday next preceding each of the named dates, respectively, without an operating permit in violation of Rule 202(b)(1) of the Board's Solid Waste Rules and Regulations (Regulations) and Section 21(e) of the Environmental Protection Act (Act).

A hearing was held in this matter on June 17, 1976 at Oquawka, Illinois. At the hearing Respondent requested a variance (R. 74). This is not the proper procedure for a variance. To request a variance Respondent must file a petition fulfilling the requisites of Procedural Rule 401.

Mr. Carlson testified that he had run a landfill in Henderson County since 1971 (R. 9). The landfill has been at the present site for approximately ten years (R. 9).

Mr. Carlson collects refuse in the general area of the site (R. 10). Besides himself he employs one man part time (R. 10). People bring refuse out to the site in other vehicles on Saturday mornings (R. 10, 11). Respondent takes in approximately fifty (50) cubic yards of refuse a week and has been doing so since July of 1974 (R. 11). Mr. Carlson was still operating at the date of the hearing (R. 11). Respondent first became aware of the need for a permit about two years ago (R. 12). Mr. Carlson's first application for a permit was rejected as incomplete (R. 12). The application was resubmitted and finally rejected because the soil in the area of the site is a sandy loam and is unsuitable for a landfill (R. 12, 23). Mr. Carlson was not aware of development permits (R. 13). The land underneath the refuse is mostly sand (R. 23, 24). Respondent uses soil he moved to place the refuse for cover (R. 23). After Respondent opens his site to the public for three hours on Saturday morning, he covers the refuse deposited in a hole prepared at the site (R. 73). On occasion people ask to dump their trash during the evening during the middle of the week (R. 73). Because Respondent must use his back hoe on another job to make it pay for itself he can't always cover evening deposits immediately (R. 73). Usually Respondent is at the site for portions of two or three days a week; he does have another business (R. 74).

There are nine wells within a quarter to a half mile of the site (R. 19, Comp. Ex. 4). Only one is to the east, all the others are to the west (R. 18). If you go more than a half mile west you are at the Mississippi (R. 19).

Agency Witness John Diefenback has visited the site six to eight times (R. 30). On two of these occasions November 13, 1974 and August 6, 1975 he observed uncovered refuse, some thin daily cover, and some thin final cover (R. 31, 33). On November 13, 1974 the need for a permit was discussed (R. 32).

John Taylor, another Agency witness, was at the site on February 19, 1976 and April 20, 1976 (R. 46). The site was in fairly good shape with the exception of a pile of demolition waste in the southeast corner (R. 46). These statements were objected to as beyond the scope of the complaint filed January 29, 1976. (R. 47). The Board finds that this information is not relevant to the finding of a violation, but it is relevant to fashioning a remedy for a site not in compliance.

The Board finds that Respondent has operated a solid waste management site without a permit in violation of Rule 202(b)(1) of the Regulations and Section 21(e) of the Act. The Board must consider Section 33(c) of the Act prior to fashioning a remedy.

Respondent's site is located on sandy soil which is very permeable. The possibility of water leaching through the refuse and contaminating the nearby wells is high; however, there has been no evidence of actual pollution in the record. Apparently a monitoring well was constructed at the site (Comp. Ex. 3). Mr. Hinshaw of the Department of Conservation has had wells to the north of the site for nine years with no finding of impurity. There is no specific reference as to which way the water drains from the site; however, the agreed upon general direction of water flow was to the west toward the Mississippi (R. 112). The location is not a good site for a landfill due to the soils and the potential for water pollution. The Agency has stated it could possibly be that the site would never receive a permit (Comp. Ex. 10). But the situation is complicated by the fact that this is the only landfill in Henderson County (R. 71, 87, 100). It is used by the Department of Conservation for refuse from recreation areas (R. 82). Respondent also picks up from the Village of Oquawka, Kirkwood and Gladstone (R. 69, 70). The closest alternative sites are 45 to 65 miles from the present site at Oquawka (R. 75, 102). Respondent is unable financially to buy a new site (R. 63). He is heavily in debt for new equipment and does not have much additional credit (R. 62, 63). Within a week of the hearing Respondent had located a site he hoped to lease; however no agreement had been finalized (R. 65). His permit application was turned down on March 3, 1976 after which he started to look for a different site (R. 64). Respondent has gone to the Henderson County Board of Supervisors to ask for aid in relocating the site but the supervisors preferred not to get into the situation themselves (R. 67, 100). The County also has contracts with Mr. Carlson. There is a possibility that the refuse could be taken to Rock Island; however, no one has investigated this alternative (R. 72, 87).

The Board finds the site is not suitable for a landfill. Respondent has been somewhat dilatory in providing information for the permit application which was first initiated in 1974. However, since the denial Respondent has shown willingness to attempt to find a different site to remedy the situation. The Board finds that in this situation a penalty of \$100 is sufficient to aid the enforcement of the Act. Respondent shall close the site and place final cover in compliance with the Regulations within 60 days of this Order. Respondent shall also cease and desist from further violations.

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. Respondent is found to be in violation of Rule 202(b)(1) of the Solid Waste Regulations and Section 21(e) of the Environmental Protection Act.
2. Respondent shall close the present site and place final cover in compliance with the Solid Waste Regulations within sixty (60) days of this Order.
3. Respondent shall cease and desist further violations.
4. Respondent shall pay a penalty of \$100 for the aforementioned violations within 35 days of this Order. Payment shall be by certified check or money order payable to:

State of Illinois
Environmental Protection Agency
Fiscal Services Division
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 14th day of October, 1976 by a vote of 5-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board