ILLINOIS POLLUTION CONTROL BOARD
May 6, 1976

ENVIRONMENTAL PROTECTION AGENCY, Complainant,	)	
v.	)	PCB 75-358
VILLAGE OF PAW PAW, Respondent.	)	

Ms. Mary C. Schlott, Assistant Attorney General, Attorney for Complainant
Mr. George H. Litow, Kent, Litow & Wagner, Attorney for Respondent

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

This case arises out of an Amended Complaint (Complaint) filed by the Environmental Protection Agency (Agency) on December 16, 1975, alleging various violations by the Village of Paw Paw (Village) in the operation of a solid waste management site. The hearing, which was held in the Village on December 17, 1975, resolved the factual issues, while several legal issues were raised by the Village in its defense.

Count I alleged that the Village owned and operated a refuse disposal site from July 27, 1974 to September 11, 1975 without an operating permit in violation of Rule 202(b)(1) of the Solid Waste Rules and in violation of Section 21(b) and Section 21(e) of the Environmental Protection Act (Act).

Count II alleged that the Village has caused or allowed open burning at its refuse disposal site from July 27, 1974, specifically including but not limited to the dates of October 16, 1974, January 7, 1975, and July 17, 1975 to September 11, 1975, in violation of Rule 311 of the Solid Waste Rules and in violation of Section 21(f) of the Act.

Count III alleged that the Village has caused or allowed open burning at its refuse disposal site from July 27, 1974, specifically including but not limited to the dates of October 16, 1974, January 7, 1975, and July 17, 1975 to September 11, 1975, in violation of Rules 502 and 506 of the Air Rules and in violation of Section 9(c) of the Act.

The subject of the Complaint is a tract of land owned by the Village which is located in Section 10, Township 37 North, Range 2 East in Lee County, Illinois.

At the hearing various Agency inspection reports, site photographs, and copies of Agency correspondence to the Village were received into evidence. Agency correspondence in a series of seven letters during the period September 27, 1973, through August 7, 1975, warned the Village of the alleged violations at the site and of the need for an operating permit (Exhibits 5, 6, 7, 8, 9, 10, 11). Similar observations at the site were noted by the Agency inspectors in their reports and photographs taken at the site corroborate their recorded observations. Open dumping of refuse and evidence of open burning were uniformly observed, and on October 16, 1974, unattended open burning was observed in progress (Exhibits 2, 3, 4, 13, 14).

The Village admitted in the pleadings that it deposits at the site landscape waste and concrete and tile residue. In addition to this, the Village President, Robert Rhea, Jr., admitted that the Village placed landscape waste and various demolition materials generated by the Village at the site (R. 124, 125). The Village admits it does not have an operating permit for the site (R. 20). Mr. Rhea further admitted the landscape waste are burned five to eight times a year at the site (R. 129). Mr. Rhea testified that only landscape wastes and demolition material generated by the Village is deposited at the site, and the Village does not allow materials generated on private property to be deposited at the site. Since the Agency failed to introduce any evidence pertaining to the origin of the refuse, for the basis of this Opinion it will be assumed that all refuse deposited at the site was generated solely by the activities of the Village.

The Village raises several points in its defense. The Village contends that it is not required to have a permit for the site since it comes within the exemption created within Section 21(e) of the Act. If the Village properly comes within the scope of Section 21(e) exemption, it similarly has a valid defense against the alleged violation of Rule 202(b)(1) since the Section 21(e) exemption is expressly incorporated therein. Section 21(e) reads:

> (No person shall) conduct any refuse-collection or refuse-disposal operations, except for refuse generated by the operator's own activity, without a permit granted by the Agency ... .

The Village argued that since the refuse deposited at its site was generated solely by its own activities, the Village

therefore comes within the exemption. This same argument was presented to the Board in EPA v. City of Pontiac, PCB 74-396, 18 PCB 303 (August 7, 1975). In that Opinion, the Board held that the legislative intent underlying the exemption provision of Section 21(e) was to exempt minor amounts of refuse which could be disposed of without environmental harm on the site where it was generated. The Board reaffirms our position in Pontiac because to do otherwise would allow the creation of a gap in the permit system inconsistent with the Act's stated purpose of preventing pollution or misuse of land arising out of improper refuse disposal. For this reason, the Board holds that the Village needed a permit for the operation of its landfill site and that by operating such site without a permit the Village violated Rule 202(b)(1) of the Regulations and Section 21(e) of the Act.

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

The Village also contends that it is exempt from the provisions of the open burning regulations because it comes within the exception created in Rule 503(c) of the Rules. Rule 503 (c) provides in relevant part that the open burning of landscape waste is permitted if done on the premises on which such waste is generated, and such activity does not occur in a prohibited area.

Rule 503(c)(1) requires that the landscape waste must be burned on the premises on which such waste is generated. It is a rule of construction that any exemption must be strictly construed against the person claiming such exemption. In this instance, the waste was not burned in the immediate area where it was generated, but was hauled to an area outside the Village to be burned. While this rule does not require that the waste be burned in the exact location where it was generated, just as obvious is the fact the exemption created was not intended to permit the collection, transportation and consolidation of landscape waste as was conducted by the Village. Such a loose interpretation of the phrase "premises on which it is generated" would effectively nullify this particular exemption precondition and frustrate the legislative intent behind the open burning ban announced in Section 9(c) of the Act. For this reason, we hold that the interpretation given to this phrase by the Village is in error. It follows from this that the Village conducted open burning in violation of Rule 502 of the Air Regulations and Rule 311 of the Solid Waste Regulations and in further violation of Section 9(c) of the Act.

The Agency also alleged in Count III that the actions of the Village also constitute a violation of Rule 506 of the Air Rules. This rule provides:

> It shall be the obligation of local governments as well as the Environmental Protection Agency, to enforce by appropriate means the prohibitions in this Part.

This provision must be read in conjunction with Section 2 of the Act which expresses the legislative intent that there shall be cooperation between different state governmental units in order to facilitate environmental protection. This was not intended to be an operative part of the Air Rules but merely hortatory, and for this reason, the alleged violation of Rule 506 must be dismissed.

The Agency also alleged in Count II a violation of Section 21(f) of the Act based upon a violation of Rule 311 (Open Burning) of the Solid Waste Regulations. Section 21(f) reads in relevant part:

> (No person shall) Dispose of any refuse, or transport any refuse into this state for disposal, except at a site or facility which meets the requirements of this Act and of the Regulations thereunder.

In order to give Section 21(f) a meaning, it must be interpreted consistent with other Section 21 subsections. Section 21(a) and (b) prohibits the open dumping of garbage and refuse respectively. Section 21(c) prohibits the dumping of refuse on public property while Section 21(d) prohibits the abandonment of any vehicle in violation of the "Abandoned Vehicles Amendment to the Illinois Vehicle Code". Section 21(e) prohibits any refuse-collection or refuse-disposal operation, without an operating permit. Statutes are normally construed so that effect is given all of their provisions so that no part will be inoperative, superfluous, void or insufficient. Section 21(f) adds meaning to the entire Section if it is interpreted as a prohibition against the disposal of refuse by refuse haulers or transporters at sites or facilities which do not meet the requirements of the Act or Regulations. Given this meaning, Section 21(f) becomes a meaningful addition to Section 21 rather than a redundant or superfluous subsection. By encouraging refuse haulers and transporters to dispose of their refuse at properly operated sites and by discouraging such disposal at improperly operated sites, it is anticipated that the goals and objectives of the Act will be more quickly realized. By ensuring that refuse haulers will only dispose of their refuse at properly operated sites, an economic incentive will be provided to refuse site operators to comply with all

site regulations, for unless the site is properly run, the haulers will take their refuse (and business) elsewhere.

In this instance the existence of open burning (Rule 311) was alleged and proven as reason why the site did not meet the requirements of the regulations. It was also alleged and proven that the Village transported the landscape waste and demolition material to the site from other premises. These facts are sufficient to support a finding that Section 21(f) was violated.

In evaluating a monetary penalty for the violations set out herein the Board must consider the factors included in Section 33(c) of the Act and other facts in this case. The opinion of the Village is typified by the statement of Mr. Rhea:

> ... "I could not ask a private owner to pay for landscape waste that was generated on Village property. These people are interested in their property and their property only. I realize Village property is all their property, but they do not want to be billed to pick up Village landscape (waste). That is our job as Village Board Members, to find ways and means to do this at no additional cost to them if possible." (R. 149).

In accordance with this position, the Village has disposed of its landscape wastes at the expense of the State's environmental statutes and regulations. This attitude is to be discouraged by the Board. While the citizens of Paw Paw may not be interested in Village property, the disposal of Village landscape waste is nonetheless their responsibility. Those who generate waste can reasonably be expected to bear the cost of its disposal. From testimony given at the hearing it appears the Village can arrange to have the landscape waste (including private as well as public) picked up by a scavenger service at a cost approaching $1900.00 per year. While it is not clear in what condition the scavenger service requires that the waste be in before their handling, this cost compares very favorably with the $1600.00 the Village has expended in the last year to haul away refuse which has collected at the site. These figures do not suggest that the Board would place an unreasonable burden on the Village by insisting that the landscape waste be disposed of in an environmentally approved way.

The Board is not sympathetic to the Village's allegation that much of the refuse is deposited without authorization. If one operates a dump one must anticipate that there will be unauthorized dumping of garbage and refuse at the site, and particularly so where it is unattended most of the time.

The refuse deposited by the Village did not include putrescible materials and the site was located in an area somewhat suitable for its use. It was not disputed that the Village was performing a necessary service, but the value of such is considerably diminished if not performed in an environmentally sound way. The manner in which the illegal open burning was conducted is considered by the Board in assessment of an appropriate level of penalty. While the Village alleged that the open burning was conducted in a safe and orderly fashion, Agency evidence establishes that on at least one occasion open burning occurred while unattended. The fact that the Village received numerous warnings and visits from the Agency but nevertheless persisted in remaining in violation of the law aggravates the violation.

Some mitigation is justified because Respondent is a municipality. The Board is aware of the strained financial position of most municipalities, and the Village is no exception. But such condition does not give the Village the right to engage in conduct in violation of the State's environmental policies. Under the circumstances the Board will assess a minimal penalty of $200.00 and will further require Paw Paw to properly close the site or obtain a permit from the Agency if it chooses to continue depositing refuse at the site. In addition, the Village shall cease and desist open burning in violation of Rule 502.

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

ORDER

1. Respondent, Village of Paw Paw, is found to have operated its waste disposal site in violation of Rule 202 (b)(1) of Chapter 7 and Sections 21(e) and 21(f) of the Act and to have conducted open burning in violation of Rule 502 of Chapter 2 and Section 9(c) of the Act, and shall pay a penalty of $200.00 for such violations. Penalty payment by certified check or money order payable to the State of Illinois shall be made within 30 days of the date of this Order to: Fiscal Services Division, Illinois Environmental Protection Agency, 2200 Churchill Road, Springfield, Illinois, 62706.

2. Respondent, Village of Paw Paw, shall cease and desist violating Rule 202(b)(1) of Chapter 7, Rule 502 of Chapter 2 and Sections 21(e) and 9(c) of the Act, as found herein, within 30 days of the date of this Order.

3. Respondent shall apply final cover within 90 days of the adoption of this Order or apply for an operating permit from the Agency within 30 days of this Order if it intends to

continue operating the site. If an operating permit is not issued within 90 days after application, all operations shall cease until the permit has been issued or the site permanently closed.

4. The charges alleging violation of Rule 506 of the Air Rules and Section 21(b) of the Act are dismissed.

IT IS SO ORDERED.

Mr. Jacob D. Dumelle concurs.

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 May, 1976 by a vote of 5-0.

Christan L. Moffett
Christan L. Moffett, Clerk
Illinois Pollution Control Board