

ILLINOIS POLLUTION CONTROL BOARD
November 1, 1979

COUNTY OF OGLE,)
)
 Complainant,)
)
 v.) PCB 78-149
)
 BROWNING-FERRIS INDUSTRIES)
 OF ROCKFORD, INC.,)
)
 Respondent.)

MR. PETER J. WOODS, STATE'S ATTORNEY, OGLE COUNTY, ILLINOIS AND DENNIS RILEY, ASSISTANT STATE'S ATTORNEY, OGLE COUNTY, ILLINOIS APPEARED ON BEHALF OF THE COMPLAINANT.

MESSRS. HARVEY M. SHELDON AND MICHAEL DUFF OF NISEN, ELLIOTT & MEIER APPEARED ON BEHALF OF THE RESPONDENT.

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

On May 23, 1978 the County of Ogle, Illinois filed a complaint against Browning-Ferris Industries of Rockford, Inc. (BFI) alleging that the Respondent operated its landfill at Davis Junction, Ogle County, Illinois in violation of its operating permit issued by the Illinois Environmental Protection Agency (Agency) and in violation of certain Board Rules and Regulations of Chapter 7: Solid Waste Regulations (Chapter 7) and solid waste provisions of the Environmental Protection Act

The complaint specifically alleged that:

1. On or before January 6, 1978 BFI failed to maintain operational roads within its site in an adequate state for all weather conditions, in violation of Rule 314(b) of Chapter 7.
2. On or before January 6, 1978, February 1 and 21, 1978, March 7, 8 and 29, 1978 and April 20, 1978 BFI failed to provide adequate daily cover in violation of Rule 305(a) of Chapter 7.
3. On or before March 30, 1978, April 4, 20 and 28, 1978 BFI allowed large amounts of litter to escape to adjoining lands in violation of Rule 306 of Chapter 7.

4. On or before February 21, March 7, 8, 29 and April 20, 1978 BFI failed to provide adequate intermediate cover in violation of Rule 305(b) of Chapter 7.
5. On or before March 7, 8, 29 and April 20, 1978 BFI failed to spread and compact solid waste as required by Rule 303 of Chapter 7.
6. On or before March 7 and 8, 1978 BFI, due to inadequate cover, failed to prevent liquid waste from seeping out of a cell in violation of Rule 314(e) of Chapter 7.
7. On or about March 7, 8, 29 and April 20, 1978 BFI failed to properly handle STP sludge and failed to maintain a required 100 feet excavated area ahead of the filling operation in accordance with its permit.
8. On or before March 8, 29 and April 20, 1978 BFI allowed open dumping of refuse at its landfill site in violation of Section 21(a) and (b) of the Environmental Protection Act.
9. On or about February 21, 1978 BFI failed to supply an adequate depth of daily cover to an area located south of the fill area in violation of Rule 305 of Chapter 7.
10. On or about January 20, 1978 BFI failed to provide sufficient equipment, personnel and supervision to ensure that operations complied with the requirements of its permit and Chapter 7.

Hearings were held on December 20, 1978 and on December 21, 1978 at the Ogle County Courthouse in Oregon, Illinois at which time the Complainant Ogle County and the Respondent BFI presented testimony and submitted exhibits for the record. Respondent objected to admission of inter-office memoranda in Ex. 5 as irrelevant and in Exs. 2, 4 and 8 as self-serving. The Hearing Officer ruled Ex. 5 inadmissible because it was self-serving and admitted the remaining exhibits, noting that they contained material of little probative value (R. 69, 85-89). Procedural Rule 320(b) provides that the Hearing Officer is to admit evidence where there is an arguable interpretation of substantive law. The Board upholds the Hearing Officer's rulings and, furthermore, has not relied on the objectionable aspects of the remaining exhibits in reaching its decision.

On two separate occasions during the hearings, Complainant alleged that Respondent's conduct was not in compliance with the Hearing Officer's order to exclude witnesses from the hearing. Complainant claimed that the presence during the hearings of David Beck, Respondent's consultant, violated the Hearing Officer's order since the order provided only for a representative of BFI at Respondent's table (R. 253-259). The Board finds that Complainant's objection is without merit. The Respondent has the discretion to select an appropriate representative as an assistant during the hearing, notwithstanding the relationship with the Respondent. Complainant's motion is denied; the testimony of David Beck is admitted into evidence.

Also during the hearings the Complainant moved to strike testimony of Respondent's witness Charles Clark on the basis that his discussions with the Respondent's Counsel prior to the hearings were in violation of the Hearing Officer's order to exclude witnesses during the hearing. The Board agrees with the Hearing Officer that it is permissible for any attorney to confer with a witness before a hearing. The Hearing Officer's determination is affirmed; the testimony of Charles Clark is admitted into evidence (R. 333-338).

The allegations against BFI involve its 160 acre solid waste management site located at Davis Junction in Ogle County, Illinois. The BFI site serves approximately 100,000 people in northern Illinois and is designed to receive an average daily load of 1000 to 1200 cubic yards of refuse (R. 173, 194; P. Ex. 1)*.

On February 27, 1975 the Agency issued a development permit to BFI for the construction and development of the sanitary landfill site. The permit contemplated that the site would be divided into three landfill phases and developed in accordance with the supplemental development permit. The site is designed to accept approximately 2,866,000 cubic yards of refuse in Phases 1 through 3 and to operate continuously 310 days per year for 23 years. Currently, Phase 1 is operating and is reportedly receiving approximately 1200 cubic yards per day (R. 194, 225; P. Ex. 1).

*Since Complainant's exhibits were submitted and admitted into evidence as "Petitioner's Exhibits", the Board will cite this reference and future references to Complainant's exhibits as indicated using the "P. Ex." abbreviation.

On February 1, 1977 BFI entered into a contract with the Rockford Sanitary District (Rockford) to accept 80,000 cubic yards of sludge vacuum filter cake (VFC) for a unit price of \$3.45 per cubic yard or a total of \$276,000 for a duration of approximately fifteen months ending April 30, 1978 (R. Ex. 4). According to the terms of the contract, Respondent had to be prepared to receive VFC at the Davis Junction landfill between the hours of 6:00 a.m. and 6:00 p.m., afterward changed to 7:00 a.m. to 7:00 p.m. Respondent was also responsible for complying with the applicable laws and regulations. Furthermore, Respondent agreed to assume all responsibility for making estimates of the size and kind of equipment necessary for the disposal of VFC (R. 164-170; R. Ex. 4).

The allegations in this Complaint concern the operations at the Davis Junction site between November, 1977 and April, 1978. While the Complainant requests no money penalty, it has petitioned the Board to revoke the operating permit issued to the Respondent for operation of its Davis Junction site.

In prior cases involving questionable solid waste operations, the Board has issued orders to cease and desist operations based upon specific findings that the site in question presented an imminent hazard due to existing geological conditions or that the operational history of the disposal site has exhibited a chronic disregard for the solid waste disposal requirements of the Board Rules and the Act. EPA v. Everett J. LaVoie, et al., PCB 72-191, 5 PCB 121 (August 8, 1972); CBE v. Earl Baker et al., PCB 72-23, 5 PCB 415 (September 12, 1972); EPA v. Harold Broverman et al., PCB 76-114, 28 PCB 123 (November 10, 1977).

Complainant has conceded that the site was geologically suitable (R. 317). There is evidence that the site has been in substantial compliance since April, 1978 (R. 91, 125; R. Grp. Ex. 3). Although there is evidence of violations in the record, it does not amount to a chronic disregard for the solid waste disposal requirements. The Board, therefore, finds the evidence inadequate to warrant the revocation of the Respondent's permit. The Board will consider the evidence in the record in light of the Complainant's charges of violation of the permit provisions, the Act and Board regulations to determine whether the Complainant has met its burden of proof and whether a penalty is justified to aid in the enforcement of the Act.

INTRODUCTION

Complainant's case-in-chief is largely confined to the testimony of field investigations and exhibits, including reports and photographs submitted by Mr. Henry Cobo, a field specialist for the Agency. Mr. Cobo's evidence is based upon field inspections conducted at the Davis Junction site on January 6 and April 20, 1978. The Respondent claims in defense that the County of Ogle failed to meet its burden with respect to the alleged violations of its complaint. In the alternative, where violation may be determined, the Respondent contends that the record adequately indicates that compliance with the requirements were either impossible or would have caused an arbitrary or unreasonable hardship.

OPERATIONAL ROADWAYS

Paragraph 1 charged BFI with failure to maintain operational roads during all weather conditions at the Davis Junction site for the contemplated 310 days of operation per year in violation of Rule 314(b) of Chapter 7 which requires ". . . roads adequate to allow orderly operations within the site."

Despite numerous inspections of the BFI's Davis Junction landfill site, the only evidence in the record regarding inoperable roads is limited to an inspection by Mr. Cobo on an extremely wet, muddy day. Mr. Cobo testified that during his January 6, 1978 inspection he observed and photographed a refuse vehicle having traction problems and requiring the assistance of BFI's spare tractor to push the vehicle up an incline near the fill face in Phase 1 to the graveled access road (R. 25-28; P. Ex. 2).

There is no question that on January 6, 1978 the area at the BFI fill face was muddy and the graveled roadway was covered with mud, more mud than the sporadic, twenty-five per cent covering characterized by Respondent's witness, David Beck. However, evidence of a single stuck vehicle does not establish that BFI failed in general to maintain operational roads in an adequate state for all weather conditions.

The charge in Paragraph 1 alleging inoperable roads in violation of Rule 314(b) is dismissed.

COVER AND SEEPAGE

Paragraphs 2 and 4 charged BFI with violations of the daily and intermediate cover requirements of Rule 305(a) and 305(b) of Chapter 7 on or before January 6 until April 20, 1978. Paragraph 6 alleged that the Respondent failed to prevent liquid waste from seeping out of a landfill cell in violation of Rule 314(e) on or before March 7 and 8, 1978.

In this case, Mr. Cobo testified that he observed protrusions of garbage, wood and paper in a small fifteen foot area in the fill face on February 21, 1978 prior to the beginning of operations (R. 44). On the March 7, 1978 inspection, Mr. Cobo observed and photographed an area of approximately twenty feet by ten feet in the fill face with no daily cover and inadequate depth for the entire area. The witness characterized that the slope of the open face was too steep to retain proper amounts of cover, although no actual measurements were conducted at the fill face. Testimony and exhibits further revealed that liquid waste had seeped through the cover of the fill face on that day (R. 55, 61, 121; P. Ex. 4). On March 29, 1978 Mr. Cobo observed and photographed three open faces in the fill face before operations had begun (R. 74; P. Ex. 7). Mr. Cobo also observed protruding garbage through the fill face cover before the day's operations on April 20, 1978 (R. 78).

Evidence and testimony concerning Mr. Cobo's inspection on January 6, 1978 is not conclusive regarding daily cover. Testimony regarding Kenneth Bechely's visits to the Davis Junction site on May 1 and 10, 1978 discloses no specific evidence of daily cover violations on those dates (R. 161-162).

Although the Respondent has conceded the occurrence of isolated daily cover violations, it claims that severe weather conditions made it impossible to dig, apply and maintain adequate cover. While Mr. Cobo's inspection reports (p. Ex. 2-8) reveal that the ambient air temperature ranged from two to forty degrees Fahrenheit, the record also indicates that BFI did not have available a ripping device at the Davis Junction site to facilitate acquisition of suitable cover material through the frozen ground. Since a ripping device is essential to operation of any sanitary landfill disposal facility which contemplates 310 operating days per year, the Board finds that application of suitable daily cover may have been technically feasible had the proper equipment been

available during this severely cold winter of 1977-78. This matter will be treated further when the Board assesses adequacy of Respondent's equipment at the Davis Junction site.

Intermediate cover provisions of Rule 305(b) require that a compacted layer of at least twelve inches of suitable material be placed on all surfaces of the landfill at the end of each day of operation where no additional refuse will be deposited within sixty days. Since Respondent's cut and fill operation contemplated no additional deposits of refuse in the trenches after daily cover had been applied, the Board concludes that any segment of the Davis Junction site in Phase 1 to the south of the working face would be in technical violation of Rule 305(b) if determined to be without sufficient intermediate cover material at the end of the day of operation.

Testimony and exhibits revealed that Mr. Cobo discovered intermediate cover violations on two occasions during numerous inspections of the BFI site. On February 21, 1978 Mr. Cobo observed garbage protrusions over two acres through the intermediate cover of Phase 1 while the air temperature was two degrees Fahrenheit (R. 49; P. Ex. 3). However, subsequent inspections on March 7 and 8, 1978 indicated marked improvement in the cover (R. 63, 66). On April 21, 1978 Mr. Cobo discovered erosion of intermediate cover due to heavy traffic in that area, but BFI was making suitable reparations at the time of the inspection (R. 78; P. Ex. 8).

Because the Davis Junction site was in the process of continuously improving its intermediate cover and making immediate repairs of segments eroded by traffic, the Respondent contends that no violations should be levied against the site. Furthermore, BFI has challenged the field observation evidence of Mr. Cobo with expert testimony of Charles Clark, Consulting Engineer. Mr. Clark has postulated, without the benefit of an on-site inspection of the intermediate cover condition, that the presence of litter on top of intermediate cover had no bearing on whether the cover met the twelve inch depth requirement. Respondent contends that without measurements of the intermediate cover depth, the evidence is insufficient for establishing violation (R. 328).

During cross-examination, Mr. Cobo concluded from field observations that the exposed refuse was uncovered or tracked up by the cover equipment. The photographs in focus from the February 21, 1978 inspection (P. Ex. 3) indicate that the protrusions of garbage and refuse in the cover were not the result of random deposits of litter, but refuse improperly covered with suitable material at the end of the day of operation (R. 49). Refuse protruding through the cover layer may result in channels which would allow water to penetrate refuse cells and defeat a purpose of the cover requirement.

In view of the foregoing, the Board finds that the testimony and the exhibits are sufficient to establish violation of the daily cover requirements of Rule 305(a) on February 21, March 7, March 29 and April 20, 1978. The record also shows that Respondent was in violation, on or about February 21, 1978 and April 20, 1978, of the intermediate cover requirements of Rule 305(b).

In Paragraph 6 the County of Ogle alleged that BFI's failure to prevent seepage of liquid waste from a refuse cell was in violation of Rule 314(e) of Chapter 7 which provides that ". . . no person shall cause or allow the development or operation of a sanitary landfill which does not provide . . . adequate measures to monitor and control leachate." Respondent has constructed a berm and cutoff trench and taken other steps to control leachate. Testimony by Mr. Cobo claiming that an absorption cell was operating with an expired permit proved to be inaccurate (R. 98-102; P. Ex. 3). However, on March 7 and 8, 1978 Mr. Cobo observed and photographed frozen seepage which had escaped the daily cover which was determined above to be inadequate (R. 55, 67).

The presence of uncontrolled leachate flows on the site is evidence of inadequate measures to control leachate. In this case, however, it appears that the inadequacy results only from inadequate daily cover. Since Respondent has already been found in violation of the daily cover rule and since there is no evidence that the leachate actually threatens to leave the site, the 314(e) charge is dismissed.

LITTER

Paragraph 3 alleged that on numerous occasions BFI allowed litter to escape to adjoining lands in violation of Rule 306 of Chapter 7 which provides that: "All litter shall be collected from the sanitary landfill site by the end of each working day and either placed in the fill and compacted and covered that day, or stored in a covered container." Although the rule does not mention escape of litter from the site, the charge is more narrowly drawn. The respondent has stipulated that litter has blown off its site onto adjoining lands on March 24, 1978, on April 20, 1978 and on at least three other occasions. In response to a blowing litter complaint, Mr. Cobo conducted an investigation at the Davis Junction site on March 29, 1978 but reported no blowing litter in the ensuing report. On the May 10, 1978 inspection, Mr. Bechely discovered no blowing or flying litter (R. 17, 116, 162; P. Ex. 7).

To prevent litter from escaping the boundaries of the BFI landfill, the Respondent has constructed four to five foot soil berms and has placed wind screens around the operating face to serve as barriers to the litter. Furthermore, a six foot boundary fence was constructed at a cost of nearly \$1760 to catch blowing litter. BFI also responded to litter complaints from neighboring landowners with overtures to clean up the papers and litter escaping from the landfill. This record of preventative measures is, however, diminished by Respondent's delay in controlling litter until March, 1978 (R. 83, 133, 146, 182; P. Ex. 7; R. Ex. 8).

The Board finds that Respondent's Davis Junction site was in violation of Rule 306 of Chapter 7 for allowing litter to escape from its boundaries on the five separate occasions as stipulated in the record.

SLUDGE

Paragraphs 5, 7, 8 and 9 charged the Respondent with violations relating to BFI's failure to properly accept, spread, compact and cover sewage treatment plant sludge cake from the Rockford Sanitary District in violation of its permit, Rules 303 and 305 of Chapter 7 and Sections 21(a) and 21(b) of the Act.

As stated above, BFI had contracted with Rockford to accept vacuum filter cake (VFC or sludge cake) between the hours of 7:00 a.m. and 7:00 p.m. While the Complainant's principal witness, Mr. Cobo, believed that Agency policy required a ten to one (10:1) sludge to refuse mixture, the record reveals that this requirement did not apply to VFC. BFI's amended permit apparently allowed a four to one (4:1) ratio and also allowed VFC to be placed at the top of the fill face to be mixed with refuse at the toe prior to application of suitable cover (R. 33-35, 123, 165-74; P. Ex. 4).

In accordance with the permit provisions and Rule 303, BFI was required to direct the Rockford sludge cake to the top of the working face and spread and compact it with the refuse into the cell at a slope no greater than three horizontal to one vertical. Rule 305 required six inches of daily cover or twelve inches of intermediate cover as dictated by the intended future use of the land.

During the March 7, 1978 inspection Mr. Cobo discovered and photographed five piles of frozen sludge cake deposited in the southeast corner of the landfill near the access roadway. The VFC deposits had not been spread, compacted or mixed with refuse nor had appropriate cover been applied. Furthermore, Mr. Cobo

observed that the fill face slope exceeded the three to one (3:1) ratio stipulated in Respondent's permit (R. 57, 59-61, 62, 121; P. Ex. 4). On March 8, 1978 Mr. Cobo observed that the same conditions existed (R. 67). Mr. Cobo's March 29, 1978 inspection revealed more than five piles of exposed, uncompacted and unspread sludge cake deposited at the BFI site (R. 74-75; P. Ex. 7). During the April 20, 1978 inspection, Mr. Cobo observed that the sludge cake was not being properly mixed with the refuse (R. 79). In other testimony, Mr. Bechely failed to clarify whether he had observed sludge handling violations during his May visits to the BFI site (R. 160).

Since the evidence here fails to show open dumping of garbage, the Board will dismiss the charge of a Section 21(a) violation. The record is, however, sufficient to establish BFI's failure to compact, spread and mix sludge with refuse and provide adequate cover on March 7, March 8, March 29 and April 20, 1978. These constitute violations of Rules 303 and 305 of Chapter 7 and thus violations of Section 21(b) of the Act. The Board further finds Respondent in violation of the slope requirements of its permit on March 7, 1978.

In mitigation, BFI has presented witnesses who have stressed that circumstances surrounding the sludge cake operation made it difficult for the Davis Junction site to properly dispose of it. Mr. Cleatos Atkinson, general manager of the Davis Junction site, claimed that the site had no control over the amount of sludge cake or the time at which the sludge cake was to be delivered. Once the material was deposited at the site, it could not be moved until mixed with refuse. It was claimed that the frozen sludge cake was impossible to move. Respondent claimed that when it was dumped at the site after 7:00 p.m. or deposited in parts of the landfill away from the working face it could not be spread, compacted or moved to a proper location in the site for suitable disposal (R. 173, 192, 233, 321).

Prior tests and studies with sludge cake indicated that BFI could adequately dispose of 260 cubic yards of sludge cake mixed with an anticipated 1000 cubic yards of refuse. However, on at least eight different occasions during the 1977-78 winter, including March 6, 7, 29, April 19 and 20, 1978 the Rockford sludge cake deliveries exceeded 260 cubic yards at a time when the daily volume of dry refuse deliveries fell below the expected 1000 cubic yard level (R. 172-177).

While it is apparent that the sludge cake exceeded the maximum amount estimated in Rockford's description to bidders, Respondent's defense ignores BFI's voluntary commitment with Rockford to accept its sludge cake and to dispose of it in a manner consistent with the requirements of this state. The agreement, which obligated BFI to accept over a fifteen month period 80,000 cubic yards of sludge cake for \$3.45 per cubic yard or a total of \$276,000 also required BFI to provide all labor, services, tools and equipment necessary to receive and properly dispose of it (R. Ex. 4).

This case concerns Respondent's non-delegable duties to the State of Illinois and not its contractual commitments. BFI had the duty to evaluate its operation at Davis Junction to ensure that it had the capability to properly dispose of the sludge cake prior to entering into the agreement with Rockford. Where complete capability was lacking, BFI had the obligation to make necessary improvements, apply for supplemental permits, or negotiate revisions to the agreement so that it could be properly performed in accordance with its permit, the Rules and Act.

The record indicates that conditions during the 1977-78 winter made it difficult to handle and properly dispose of sludge cake in the manner anticipated by the Respondent. However, the Board will not relieve BFI of all responsibility to Illinois Rules and permit requirements simply on a claim that compliance, at the time performance was required, would have been difficult. While the Board may consider problems with the timing of deliveries and location of sludge cake deposits as legitimate mitigating factors, the Board also believes that any hardship experienced by BFI was largely self-imposed.

EXCAVATION FLOOR SPACE

Paragraph 7 alleged that BFI failed to maintain a 100 foot excavation area ahead of the working face as required by its permit. Mr. Cobo testified that on March 7, 8 and 29, 1978 he observed that BFI had failed to provide 100 feet of north-south floor space in Phase 1 of the Davis Junction site (R. 57, 68, 75).

Having reviewed the evidence in the record regarding excavation floor space, the Board finds that in its Application for Supplemental Permit (P. Ex. 1), BFI was required to develop at least 100 feet of north-south floor space prior to operation of the Davis Junction site. However, nothing in the record indicates that BFI was obliged to maintain a 100 foot excavation space during daily operations (P. Ex. 1). Since there is no evidence to show that 100 feet of floor space was required by Respondent's permit, the allegations of excavation floor space are dismissed.

EQUIPMENT, PERSONNEL AND SUPERVISION

Paragraph 10 alleged that BFI had failed to provide sufficient equipment, personnel and supervision to ensure that operations complied with the requirements of its permit and Chapter 7.

While the Respondent has supplemented the record with evidence of the cost of additional equipment, our findings above concerning cover violations indicate that the equipment was insufficient to excavate suitable daily and intermediate cover material. According to the record, a ripping device is necessary to rip or to uncover suitable cover material from frozen ground. Mr. Atkinson testified that the ripping device was ordered for the Davis Junction site at the suggestion of Mr. Cobo in the fall of 1977. Upon delivery in December, 1977 Respondent discovered that the wrong device had been sent and another unit had to be ordered. Respondent notes that additional equipment including the ripping device and the tractor which cost \$68,000 was not required by its permit. However, the ripping device should have been in place from the beginning for an all weather landfill operation such as the Davis Junction site. Although the Respondent may have met the requirements of its permit with the equipment on the premise, BFI was not relieved of its responsibility to comply with the other Chapter 7 requirements (R. 177-180, 185, 214; R. Ex. 6).

In addition, the Board finds that BFI did not provide adequate supervision and failed to implement safeguards within the context of its contractual agreement to ensure that the Rockford sludge cake was properly accepted, deposited and disposed. BFI should have provided the necessary equipment or personnel to protect against violation.

In view of these determinations, the Board finds that BFI failed to provide adequate equipment, personnel and supervision to ensure compliance with its permit requirements, the regulations and Act.

SECTION 33(c) FACTORS AND REMEDIES

Section 33(c) of the Act requires the Board in making its decision to consider and evaluate the character and degree of injury of the violations, the social and economic value of the pollution source, the suitability of the pollution source to its location and the technical practicability and economic reasonableness of reducing or eliminating the pollution violation. The Board will consider the facts and circumstances bearing upon the reasonableness of the violations before imposing any remedial provisions of the Act. The Board makes the following findings:

1. The character and degree of the injury must be considered in light of our determinations in this enforcement action. The Board has reviewed this record and has found that the BFI landfill operation at Davis Junction was in violation of daily and intermediate cover requirements of Rules 305(a) and 305(b); has allowed blowing litter to escape from its site; has violated provisions of its permit, the rules and Act in failing to properly receive and dispose of sludge cake and provide adequate equipment, personnel and supervision to ensure that proper disposal practices were maintained at all times during the complaint period. While these violations do not warrant an order to cease and desist disposal operations, the existence of operational violations at Davis Junction during winter conditions undermines effective management of consistent solid waste practices in this state. While violations were not determined to be continuous and no immediate environmental damage was disclosed in the record, the Board must impose its penalty provisions as incentive for future compliance with the Act, Board Rules and permits.

2. The BFI site at Davis Junction has social and economic value when properly operated. It is designed to accept and dispose of 1000 to 1200 cubic yards of refuse serving approximately 100,000 people in northern Illinois. However, these factors will not excuse the Respondent from violations of the solid waste requirements of this state.

3. The record supports BFI's contention that the Davis Junction site is geologically sound and environmentally suitable. Expert testimony indicates that the BFI landfill is the most suitable site for disposal of the Rockford sludge cake (R. 317). However, the Board finds that operations of the site in violation of specific requirements of the Rules and the Act and at variance with its permit diminishes the social and economic value of the site to the State of Illinois.

4. As stated in connection with specific violations, the Board finds that compliance with the applicable solid waste requirements was technically feasible and economically reasonable. While there is some indication in the record that the certain requirements were not taken seriously enough at the very beginning of the operation, there is little indication of willful or intentional disregard of applicable solid waste requirements.

In view of these determinations, the Board will assess a penalty of \$1,000 to ensure future compliance as an aid to the enforcement of the Act. Respondent BFI shall cease and desist from future violations of the Act and Board regulations.

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

ORDER

It is the Order of the Pollution Control Board that:

1. The charges alleging violation of the 100 foot excavation floor space permit requirement, violation of Rules 314(b) and 314(e) of Chapter 7: Solid Waste Regulations and Section 21(a) of the Environmental Protection Act are hereby dismissed.
2. Browning-Ferris Industries of Rockford, Inc., is hereby found to have operated the Davis Junction landfill site in violation of: the daily cover requirements of Rule 305(a) of Chapter 7: Solid Waste Regulations on February 21, March 7, March 29 and April 20, 1978; the intermediate cover requirements of Rule 305(b) on or about February 21 and April 20, 1978; and the sludge disposal requirements of its permit, Rules 303 and 305 and Section 21(b) of the Environmental Protection Act on March 7, 8, 29 and April 20, 1978.
3. Browning-Ferris Industries of Rockford, Inc., is hereby found in violation of Rule 306 of Chapter 7: Solid Waste Regulations for allowing litter to escape from its boundaries on five separate occasions, including March 24 and April 20, 1978; and has failed to provide sufficient equipment, personnel and supervision to ensure that operations at the landfill are in compliance with its permit, Chapter 7: Solid Waste Regulations and the Environmental Protection Act.
4. Browning-Ferris Industries of Rockford, Inc. shall cease and desist from violations of its permit, Chapter 7: Solid Waste Regulations and the Environmental Protection Act.
5. Browning-Ferris Industries of Rockford, Inc. shall, by certified check or money order payable to the State of Illinois, pay a civil penalty of \$1,000 which is to be sent to:

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 1st day of November, 1979 by a vote of 4-0.

Christan L. Moffett (pw)
Christan L. Moffett, Clerk
Illinois Pollution Control Board