

ILLINOIS POLLUTION CONTROL BOARD
August 12, 1976

ENVIRONMENTAL PROTECTION AGENCY,)
)
 Complainant,)
)
 v.) PCB 76-22
)
 CITY OF CHICAGO HEIGHTS, a)
 municipal corporation,)
)
 Respondent.)

Mr. James L. Dobrovoly, Assistant Attorney General, appeared on behalf of Complainant; and Mr. Thomas McCabe appeared for Complainant pursuant to Rule 711 of the Supreme Court Rules.

Mr. James F. Creswell appeared on behalf of 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 21, 1976. The complaint alleges that the City of Chicago Heights, Illinois owns and operates a refuse disposal site on the north side of Sauk Trail, one-third mile east of East End Avenue in Cook County, Illinois without an operating permit in violation of Rule 202(b) of the Solid Waste Rules and Regulations (Regulations) and of Section 21(b) and 21(e) of the Environmental Protection Act (Act). The complaint further alleges that on nine separate dates from February 14, 1974 to October 29, 1975 Respondent has failed to place a compacted layer of not less than two feet of cover over the entire surface of the final lifts, and that as of the date of the complaint refuse and debris remained exposed at the site in violation of Rule 305(c) of the Regulations and hence a violation of 21(b) of the Act.

The Board has often held that a violation of Rule 202(b) of the Regulations does not constitute a violation of Section 21(b) of the Act. Therefore, the portion of the complaint alleging violation of Section 21(b) will be dismissed.

The Agency filed a Request for Admissions on February 2, 1976. Respondent did not reply within 20 days and under Procedural Rule 314(c) all requests for admissions of matters of fact and genuineness of document are normally deemed admitted. In this case Respondent claims not to have received the Request. The Board finds it unnecessary to rule in this matter as the facts submitted at the hearing are adequate to resolve the case.

The hearing in this matter was held on May 10, 1976.

The Agency witness Mr. Rene Van Someren had visited the site in question on March 13, 1974, May 24, 1974, September 25, 1974, August 19, 1975, October 29, 1975 and November 18, 1975 (R. 15, 46). On all these visits the facts were substantially the same. The gate was locked on three occasions and was unlocked the other three occasions (R. 17, 21, 24, 29, 40, 47). On all occasions the fence was knocked down and Van Someren went into the area where the fence was down (R. 17, 21, 24, 29, 40, 47). On all occasions there was uncovered refuse (R. 17, 21, 24, 29, 40, 47). The type of refuse was similar. On March 13, 1974 Van Someren observed asphalt, concrete, brick-bats, a water heater, a mattress and exposed wood (R. 17). On May 24, 1974 he saw concrete, asphalt bricks and some wood (R. 21). On September 25, 1974 Van Someren observed a greater portion of asphalt than before (R. 24). Part of the site was at final lift but remained uncovered (R. 18, 19). This condition remained the same on all his visits (R. 22, 25, 30, 41, 47). On no occasion did Mr. Van Someren witness anyone actually dumping (R. 18, 22, 24, 29, 41, 47).

After the September 25, 1974 visit a letter was sent to the Corporation Counsel for the City of Chicago Heights from the Agency (R. 26, 27). This letter notified the City of the Investigation and the possible violations (Comp. Ex. 2). A second letter was sent after the August 19, 1975 visit (Comp. Ex. 5).

On August 22, 1975 a complicity conference was held in Aurora, Illinois, concerning the City's municipal landfill (R. 37, 38). At this meeting the refuse site in question was discussed. The City Superintendent of Streets and Public Improvement, Ernest Molyneaux, and the Chief Health Inspector, Robert Shambo, indicated they had been unaware of the situation and would look into the matter (R. 39). Subsequently, Mr. Molyneaux visited the site and determined that the City did own it and that there was no permit for the site (R. 76). At that time, the third week in August, he chained the gate shut (R. 77). On one occasion in September or October a

City contractor did dump some concrete there (R. 77). Other than this Mr. Molyneaux knows of no other dumping at the site (R. 77). Mr. Molyneaux stated that he was first able to get the fill necessary for cover in February of 1976 (R. 78). Respondent proceeded to enter photographic exhibits showing the final fill being applied in February and the site as it was the morning of the hearing (Resp. Ex. 1-6, 8-10).

There is no question that the refuse site was being used as a landfill without a permit and that no final cover was being applied to the final lifts. The Board finds the City of Chicago Heights in violation of Rule 202(b) of the Regulations and Section 21(e) of the Act; and in violation of Rule 305(c) and Section 21(b) of the Act.

In considering the factors required by Section 33(c) of the Act the Board observes that there is no social or economic value of an open dump such as the one in this case, particularly when the City has another municipal landfill that is adequate for the City's needs. The site, under consideration, is in an industrial-commercial area which is more suitable for sanitary landfills than residential areas (R. 65). However, the site is also visible from the road (R. 66). The City has now covered the site and there is no question that compliance is feasible.

The site had remained uncovered for several years. An open refuse site allows leachate to form and eventually pollute streams and water supplies. The City had received two letters of notice and the problem was presented in conference. From the conference in August 1975, it took six months for the City to act. It appears that the area may now be in compliance although it was not stated that the cover placed on the area was two feet of compacted material. No injury has been alleged in this matter, although unless cover is properly applied pollution could still occur. The purpose of the regulations and the permit system is to prevent pollution before it happens. This is to no avail if the system is ignored. Because there is no apparent damage and the City has acted to come into compliance, the Board finds that a large penalty is not warranted. A penalty of \$750 is assessed to aid enforcement of the Act. The City will also allow the Agency to determine the adequacy of the final cover.

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

Mr. Dumelle concurs.

ORDER


It is the Order of the Pollution Control Board that:

1. The City of Chicago Heights was in violation of Rule 202(b) of the Solid Waste Regulations and Section 21(e) of the Act; and of Rule 305(c) and Section 21(b) of the Act.
2. The allegation of violation of Section 21(b) in connection with the violation of Rule 202(b) is dismissed.
3. The Agency will verify that the final cover is adequate within 90 days of the date of this Order.
4. Respondent will cease and desist from future violations of the Regulations and the Act.
5. Respondent shall pay a penalty of \$750. 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

Payment shall be within 35 days of this Order.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 12th day of August, 1976 by a vote of 5-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board