

ILLINOIS POLLUTION CONTROL BOARD
April 13, 1978

PEOPLE OF THE STATE OF ILLINOIS,)
)
 Complainant,)
)
 v.)
)
THE ADWELL CORPORATION, an Illinois)
Corporation,)
)
 Respondent.)

PCB 76-266

Mr. Jeffrey S. Herden, Assistant Attorney General, appeared on behalf of the Complainant.

Carey, Filter and White, Attorneys at Law, (Mr. Thomas F. Carey, of counsel), appeared on behalf of the Respondent.

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

This matter comes before the Board on the October 26, 1976 Complaint brought by the People of the State of Illinois alleging that The Adwell Corporation owned a solid waste management site which Waste Management of Illinois, Inc. operated without the requisite sanitary landfill Operating Permit in violation of Rule 202(b)(1) of Chapter 7: Solid Waste Regulations and Section 21(e) of the Environmental Protection Act.

On December 8, 1976, the People filed a Request for Leave to File an Amended Complaint, and an Amended Complaint.

The Amended Complaint added a second count to the original Complaint by charging the Respondents with failing to place a suitable final cover on the site in violation of Solid Waste Rules 301 and 305(c), and Section 21(b) of the Act.

On December 16, 1976, the Board granted the Motion for Leave to File the Amended Complaint.

The Adwell Corporation filed its Answer to the Amended Complaint on January 5, 1977.

As a result of discussions among the parties and various discovery methods employed by the Complainant, the People filed a Motion to Dismiss without prejudice Waste Management as a Respondent in this case. On April 28, 1977, the Board granted this motion.

Subsequently, a proposed settlement agreement was worked out between the Complainant and the remaining Respondent (i.e., The Adwell Corporation). On January 18, 1978, a hearing was held and the parties filed a Stipulation and Proposal for Settlement.

The stipulated background facts indicate that The Adwell Corporation owns the parcel of real estate in Cook County on which the sanitary landfill is located. Prior to 1970, the Company entered into an oral agreement with Mr. Thomas Chirillo to allow him to extract sand from the site and then fill the property with solid fill. Under this agreement, Chirillo was to pay the firm the sum of \$1,000 per month. Shortly after February, 1970, when Chirillo did not make the payments agreed upon, the oral agreement was cancelled.

The Adwell Corporation then took various steps to rid the property of Chirillo. The Company hired a private detective, obtained a Forcible Decree, and purchased an adjacent piece of property upon which Chirillo was parking his equipment while dumping under the cover of night.

Nevertheless, Thomas Chirillo continued to operate a landfill at the property without the consent of Adwell until February 28, 1974, when he sold his refuse collection business to Waste Management of Illinois, Inc.

However, Chirillo was under an Order of this Board (PCB 72-201) entered January 23, 1973, which required, inter alia, that he either obtain a permit or close and apply final cover to the landfill within 6 months from the date of the Order.

Despite this Board Order, Chirillo continued to accept certain refuse for disposal at the landfill site under the cover of night, and without the specific knowledge, consent or approval of The Adwell Corporation.

Thus, on August 14, 1975, the Illinois Attorney General brought suit against Chirillo for his failure to comply with the terms of the Board Order. People v. Thomas Chirillo, Circuit Court of Cook County, 75 CH 5100. Accordingly, on November 15, 1977, Chirillo was found to have violated the Board Order and a judgment of \$5,000.00 was entered against him.

Yet, as late as December 1976, Chirillo (without the knowledge or consent of Adwell) continued to operate a landfill on the 48-acre site near Interstate Route 94 and 130th Street in Chicago. Non-putrescible refuse was accepted by Chirillo and used to fill in low areas and bring the property to grade level. Chirillo never obtained any Agency permit to conduct a landfill operation on this property, nor was final cover applied at the site.

The Complainant contends that the agreed statement of facts previously discussed indicates that The Adwell Corporation, as owner of the property in question, allowed the operation of a sanitary landfill: (1) without the requisite Operating Permit in violation of Solid Waste Rule 202(b) (1) and Section 21(e) of the Act; and (2) without complying with the final cover requirement of Rule 305(c), in violation of Rule 301 and Section 21(b) of the Act.

The Adwell Corporation does not admit these violations and denies the existence of any violations. However, for the purpose of this settlement only, the Respondent offered no evidence to refute the People's contention.

Basically, the proposed settlement agreement provides that the Company will: (1) pay a stipulated penalty of \$500.00; (2) enter into an agreement for sale or lease of the property to a person or persons who will operate the site as a landfill; (3) apply for Agency permits to develop and operate the site as a landfill within 60 days of the Board Order approving this settlement; (4) begin the development work necessary to obtain an Operating Permit within 180 days after issuance of its Development Permit; and (5) begin operation of the site as a landfill within 1 year after Agency issuance of a Development Permit for the property.

In determining compliance with the time limits specified above, the proposed settlement provides that the Company will not be responsible for delays: (1) caused by acts of God; war, riot, insurrection or similar circumstances beyond Adwell's control; (2) caused by Adwell's lessees or assigns (provided, however, that the Company notify the Illinois Attorney General's office of the nature and duration of the delay within 10 days after the delay becomes known to Adwell).

In the event that the Company, its lessees or assigns, shall fail to meet any of the requisite time limits, Adwell agrees to: (1) pay an additional penalty of \$5,000.00; (2) place final cover on the site; (3) post a performance bond acceptable to the Illinois Attorney General's Office to ensure that the subject property is covered.

Additionally, the settlement agreement provides that The Adwell Corporation does not admit the existence of any violation of any law or regulation and that nothing contained in the agreement constitutes a waiver by the Company of any legal rights which it might otherwise have to contest the constitutionality, lawfulness, reasonableness, applicability or validity of any law or regulation.

In evaluating this enforcement action and proposed settlement, the Board has taken into consideration all the facts and circumstances in light of the specific criteria delineated in Section 33(c) of the Act. Incinerator, Inc. v. Illinois Pollution Control Board, 59 Ill. 2d 290, 319 N.E. 2d 794 (1974).

Accordingly, the Board accepts the Stipulation and Proposal for Settlement and imposes the stipulated penalty of \$500.00.

This Opinion and Order constitute 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 Adwell Corporation shall comply with all terms and conditions of the Stipulation and Proposal for Settlement filed January 18, 1978, which is incorporated by reference as if fully set forth herein.

2. Within 35 days of the date of this Order, The Adwell Corporation shall pay the stipulated penalty of \$500.00, payment to be made by certified check or money order to:

State of Illinois
Fiscal Services Division
Illinois Environmental Protection Agency
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 13th day of April, 1978 by a vote of 5-0.


Christan L. Moffett, Clerk
Illinois Pollution Control Board