

ILLINOIS POLLUTION CONTROL BOARD  
August 4, 1977

PEOPLE OF THE STATE OF ILLINOIS, )  
 )  
 Complainant, )  
 )  
 v. ) PCB 77-101  
 )  
 )  
 BROWNING-FERRIS INDUSTRIES OF )  
 ILLINOIS, INC., a Delaware corporation, )  
 )  
 Respondent. )

MR. JEFFREY S. HERDEN, ASSISTANT ATTORNEY GENERAL, APPEARED ON BEHALF OF THE COMPLAINANT;  
MR. HARVEY M. SHELDON, PLUNKETT, RISEN, ELLIOT & MAYER, APPEARED ON BEHALF OF THE RESPONDENT.

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

This matter comes before the Pollution Control Board (Board) upon the April 1, 1977 Complaint of the Attorney General charging violations of Rules 301 and 306 of Chapter 7: Solid Waste Regulations and Section 21(b) of the Environmental Protection Act (Act) by Respondent Browning-Ferris Industries of Illinois, Inc., (BFI) a Delaware corporation licensed and qualified to do business in Illinois. A hearing was held on June 15, 1977 and the parties filed a "Stipulation and Proposal for Settlement" on June 24, 1977.

BFI owns and operates a solid waste landfill site located in Lake County, Illinois. Shortly after operation of the site began in September 1976 it was discovered that on certain days litter was being carried by the wind onto adjacent agricultural lands and interfering with the working of those lands. Rule 306 requires that all litter at the landfill site is to be collected by the end of each day and placed in the fill or stored in a closed container. BFI in its stipulation admits to a violation of Rule 306 beginning on or about September 3, 1977 and continuing until the filing of this complaint, including but not limited to September 3, 1976, September 12, 1976, September 16, 1976, September 28, 1976, October 21, 1976, November 5, 1976, November 12, 1976, December 2, 1976, December 28, 1976, January 20, 1977, February 23,

1977, February 28, 1977 and March 30, 1977. A violation of Rule 306 also constitutes a violation of Rule 301 and Section 21(b) of the Act.

In the construction of this landfill site, BFI recognized the problem of blowing litter and erected cyclone fencing at the site. However, actual wind conditions occurring once the site became operational were not fully anticipated. As a result, BFI purchased additional fencing in spring, 1977, some of which was purchased before this complaint was filed. Further, in the "Stipulation and Proposed Settlement", BFI has agreed to take additional measures to control its blowing litter problem. First, BFI agrees to collect the litter from the site and dispose of it properly as required by Rule 306. Second, BFI agrees to employ temporary help during periods of high winds to control blowing litter. Third, BFI will inspect the adjoining lands and remove any blowing litter. Finally, BFI will permit the Attorney General to inspect the site without obtaining a warrant and will consider fully any written recommendation by the Attorney General or the Agency to install additional fencing.

The Board accepts the "Stipulation and Proposed Settlement" of the parties with minor alterations and finds BFI in violation of Rules 301 and 306 of Chapter 7: Solid Waste Regulations and Section 21(b) of the Act. The Board has considered the Section 33(c) factors in assessing a penalty for these violations. BFI has the burden of producing evidence concerning these factors. Processing and Books, Inc. v. Pollution Control Board, 64Ill.2d68, 351 N.E.2d 865 (Ill.Sup.Ct. 1976). Based on the available evidence, the Board finds that while the landfill site has social and economic value as a solid waste disposal facility and is suitable to the area in which it is located the degree of interference to adjoining properties is substantial and the technological practicability and economic reasonableness of eliminating the blowing litter problem through the means outlined in the proposed settlement is beyond doubt. Based on these factors, the Board assesses the stipulated penalty of \$1,000,00.

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

#### ORDER

It is the Order of the Pollution Control Board that:

- 1) BFI is in violation of Rules 306 and 301 of Chapter 7: Solid Waste Regulations and Section 21(b) of the Act beginning on or about September 30, 1977 and continuing through March 30, 1977.

- 2) BFI, on each day of operation, shall collect all litter at the landfill site by the end of the working day and place it in the fill or store it in a covered container.
- 3) BFI shall hire temporary help during periods of high wind to control blowing litter at the landfill site.
- 4) BFI shall inspect periodically all properties adjoining the landfill site for blowing litter and shall, upon permission of the owner, enter upon these lands and remove all blowing litter at their expense.
- 5) BFI shall permit representatives of the Attorney General to enter the landfill site for purposes of inspection and review during normal working hours without obtaining a warrant, upon presentation of proper credentials.
- 6) BFI shall consider fully any written recommendation made by the Attorney General or the Agency to install permanent or portable fencing at the landfill site, and shall order said fencing for installation or indicate in writing to the recommending party its reasons for failing to do so within 30 days of the receipt of the written recommendation.
- 7) BFI shall pay a penalty of \$1,000.00 for its violations of the Act and the Solid Waste Regulations, payable within 14 days from the date of this Order to:

State of Illinois  
Environmental Protection Agency  
Fiscal Services Division  
2200 Churchill Road  
Springfield, Illinois 62706

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 4<sup>th</sup> day of August, 1977 by a vote of 50.

  
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Christan L. Moffett, Clerk  
Illinois Pollution Control Board