

ILLINOIS POLLUTION CONTROL BOARD
May 8, 1975

ENVIRONMENTAL PROTECTION AGENCY,)
Complainant,)
v.) PCB 74-405
CITY OF SHAWNEETOWN,)
Respondent.)

MR. FREDERIC BENSON, attorney for Complainant;
MR. JOSEPH R. HALE, attorney for Respondent.

OPINION AND ORDER OF THE BOARD (by Dr. Odell)

On October 29, 1974, the Illinois Environmental Protection Agency (Agency) filed a Complaint against the City of Shawneetown alleging that the City failed to have an Operating Permit for its solid waste management site in violation of Rule 202(b)(1) of the Solid Waste Regulations (Chapter Seven) and Section 21(e) of the Illinois Environmental Protection Act (Act). Complainant alleged that these violations occurred from July 27, 1974 -- the effective date of Rule 202(b)(1) -- until October 29, 1974. Complainant further alleged that Respondent allowed the open burning of refuse at its site on September 27, 1974, in violation of Rule 311 of Chapter Seven and Section 9(c) of the Act. The solid waste management site is located in Section 21, Township 9 South, Range 9 East, in Gallatin County, Illinois.

A hearing took place on Tuesday, March 11, 1975, in the County Courthouse in Shawneetown, Illinois. At the beginning of the hearing the Respondent admitted (Comp. Ex. 1; R. 5):

"1. That Respondent did not at any time between the dates of July 27, 1974, and October 24, 1974, possess a permit issued by the EPA for the operation of a solid waste management site located in Section 21, Township 9 South, Range 9 East, in Gallatin County, Illinois.

"2. That Respondent operated or caused to be operated a solid waste management site in Section 21, Township 9 South, Range 9 East, in Gallatin County, Illinois on July 30, 1974, and August 14, 1974.

"3. That Respondent has operated or caused to be operated a solid waste management site located in Section 21, Township 9 South, Range 9 East, in Gallatin County, Illinois, with operating hours on two or more days of each week between July 28, 1974, and October 19, 1974.

"4. That Respondent caused or allowed the open burning of refuse at its solid waste management site located in Section 21, Township 9 South, Range 9 East, in Gallatin County, Illinois, on September 27, 1974."

The Agency also introduced into evidence copies of letters it sent to the Respondent notifying it that the site did not have a permit and indicating other possible violations of Chapter Seven relating to the accumulation of trees and brush, open burning, and inadequate daily cover (Joint Ex. 1-16; R. 8). These letters were sent from September 27, 1973, until December 19, 1974.

The City stated that it had not applied for an Operating Permit for its site because attempts are being made to establish a county-wide landfill. The City doesn't want to burden its citizens with expenses for two permit applications (R. 17, 18). It was estimated that it would cost \$3,000 to \$5,000 to apply for an Operating Permit at the present site (R. 49). The City expends \$12,000 to \$14,000 annually to operate the site (R. 12). A witness for the Respondent concluded that the City's financial resources were "meager" (R. 49).

The solid waste management site serves 20% of the communities in the county (R. 28). The next nearest site is 25 to 30 miles away in Harrisburg (R. 13). Before the City's site was operating, people dumped their garbage on the banks of the Ohio River (R. 14). If the landfill were closed, the whole community would be littered with trash (R. 21). Approximately 50% of the local citizens haul their own garbage to the landfill (R. 23). Equipment (a compactor) was not available until several months ago to haul the garbage to the Harrisburg site (R. 26).

There is no water pollution problem at the site (R. 31-36). Brush fires are no longer occurring at the landfill (R. 46). The site is fenced; an operator is on duty 8:00 a.m. to 5:00 p.m. (R. 43-45). Four inches of cover is applied to new refuse (R. 46). Local citizens testified that the City is doing a good job of operating the landfill (R. 60, 66, 67). No complaints to its operation have been received (R. 14). Citizen witnesses felt that the landfill should remain open because it is better to "use the landfill than to dump along the roadside (R. 63)."

We find that Respondent violated Rule 202(b)(1) of Chapter Seven and Section 21(e) of the Act from July 27, 1974, until October 29, 1974. Rule 311 of Chapter Seven and Section 9(c) of the Act were violated on September 27, 1974. We assess a penalty of \$150.00 for operating the site without a permit and impose a penalty of \$25.00 for the single open burning violation. Looking to Section 33(c) of the Act, we find that the degree of injury to the general welfare was not great; the site has social and economic value; and the landfill appears to be suitably located. Also, the fact that Respondent is a municipality argues for mitigation. On the other hand, the City's deliberate flaunting of the law demands that more than a token penalty be assessed if the purposes of the Act are to be respected. A person does not have

the option of disregarding the law if it feels the law imposes an unreasonable hardship upon it. The Act provides that a person can receive a variance if the test of arbitrary or unreasonable hardship is met.

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

ORDER

IT IS THE ORDER of the Pollution Control Board that:

1. Respondent violated Rules 202(b)(1) and 311 of Chapter Seven and Sections 9(c) and 21(e) of the Act as set out in the Opinion.

2. Respondent shall pay a penalty of \$175.00 for its violations of the Act and regulations established in this Opinion. Payment shall be by certified check or money order payable to the State of Illinois, Fiscal Services Division, Environmental Protection Agency, 2200 Churchill Road, Springfield, Illinois 62706. Payment shall be made within 35 days of the adoption of this Order.

3. Respondent shall cease and desist from violating Rule 311 of Chapter Seven and Section 9(c) of the Act.

4. Respondent shall apply to the Agency for an Operating Permit for its Shawneetown solid waste management site within 120 days of the adoption of this Order or make other arrangements to comply with the requirements of the Act and Regulations.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 8th day of May, 1975, by a vote of 5-0.


Christan L. Moffett, Clerk
Illinois Pollution Control Board