ILLINOIS POLLUTION CONTROL BOARD
March 22, 1973

ENVIRONMENTAL PROTECTION AGENCY	)	
	)	
	)	
v.	)	PCB 72-467
	)	
	)	
M & W DISPOSAL COMPANY, INC.	)	

Samuel Morgan, Special Assistant Attorney General, for Environmental Protection Agency

Zenon F. Myszkowski, Attorney at Law, for M & W Disposal Company, Inc.

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

By complaint filed on December 1, 1972, the Environmental Protection Agency ("Agency") charged M & W Disposal Company, Inc. ("M & W"), owner and operator of a certain refuse disposal site located in the County of Will operating without a permit issued by the Environmental Protection Agency in violation of Section 21(e) of the Environmental Protection Act, hereinafter referred to as "Act". It is charged by the Agency:

> That on or about the following dates, Respondent caused or allowed open dumping of garbage at said facility in violation of Section 21(a) of the Act: September 21, 1971, September 22, 1971.
>
> That on or about the following dates, Respondent caused or allowed the open dumping of refuse at said facility in violation of Section 21(b) of the Act; September 21, 1971; September 22, 1971; November 15, 1971; and February 11, 1972.
>
> That on or about the following dates, Respondent disposed of refuse at a site or facility not meeting the requirements of the Act and Regulations thereunder in violation of Section 21(f) of the Act: May 21 and 27, 1971; June 7 and 8, 1971; September 21 and 22, 1971; November 15, 1971; January 24, 1972; and February 11, 1972.
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> That on or about the following dates, Respondent caused or allowed the open dumping of refuse at said facility in violation of Rule 3.04 of Rules for Refuse Disposal Sites and Facilities, hereinafter referred to as "Rules," remaining in effect pursuant to Section 49(c) of the Act: September 21 and 22, 1971; November 15, 1971; and February 11, 1972.

That at all times relevant herein, Respondent failed to make the necessary physical improvements before placing said facility in operation in violation of Rule 4.03 of the Rules.

That on or about the following dates, Respondent failed to provide proper daily cover at said facility in violation of Rule 5.07(a) of the Rules: May 27, 1971; June 7 and 8, 1971; September 21, 1971; September 22, 1971; November 15, 1971; January 24, 1972; and February 11, 1972.

That on or about the following dates, Respondent caused or allowed the deposition of liquids or hazardous materials at said facility without written approval from the Agency, in violation of Rule 5.08 of the Rules: September 21 and 22, 1971.

That on or about the following dates, Respondent failed to provide adequate vector control at said facility in violation of Rule 5.09 of the Rules: September 21 and 22, 1971.

By Stipulation the Respondent admits all of the aforegoing violations with the exception of the last one enumerated, to wit: Respondents failed to provide adequate vector control at said facility, in violation of Rule 5.09 of the Rules: September 21 and 22, 1971.

The Respondent, before the Hearing Officer, proceeded to introduce what he considered mitigating evidence. The President and sole stockholder of the Respondent Corporation testified that he was unable to obtain the proper zoning and, therefore, unable to obtain a proper permit to operate, but that he continues to operate because of his "financial ruin and total collapse". Exhibits were introduced by the Respondent from the Will County Health Department indicating a few violations between November 29, 1971, and February 7, 1973. Finally, the Respondent introduced an exhibit of a Will County Grand Jury "No Bill" for the year 1968 wherein said Grand Jury investigated "The Garbage Problem of the City of Joliet During the Year 1968". The purpose of this exhibit was to indicate that apparently fires and vandalism of an unknown origin were damaging the land fill and equipment of the Respondent.

The Attorney General was quick to point out that the relevancy of the Grand Jury investigation was highly questionable because the investigation anti-dated the dates of violation charged by the Agency against the Respondent.

In conclusion, we find that with the exception of paragraph 10 in the Complaint, all violations were present as recited by virtue of the Stipulation. With regard to the so-called mitigating evidence, the record is replete with the Respondent's deliberate violations of the Environmental Protection Act as well as the Rules for Refuse Disposal Sites and Facilities. As mitigation he offers the fact that he attempted to obtain a new zoning status for his property but was refused. He continued to operate. He offers as mitigating evidence unverified copies of reports from the Will County Health Department, some of which aggrevate rather than mitigate his position. The twenty-seven (27) photographs which were marked "Complainant's Exhibit No. 1" indicate the complete lack of regard the Respondent had for the environment.

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

IT IS THE ORDER of the Pollution Control Board:

1. Respondent shall pay to the State of Illinois within thirty-five (35) days from the receipt of this Order, the sum of $2500 as a penalty for the violations found in this proceeding as set forth in the Stipulation. Payment shall be made by certified check or money order payable to the State of Illinois, and shall be sent to Fiscal Services Division, Illinois Environmental Protection Agency, 2200 Churchill Drive, Springfield, Illinois 62706.

2. Respondent shall within ninety (90) days from the date herein comply with all rules and statutory provisions, including the obtaining of all necessary permits with respect to the operation of a refuse disposal site and facility.

3. Respondent shall cease and desist the aforesaid violations and shall close said facility in accordance with the Act and the Rules if said permit application is denied.

I, Christan Moffett, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and Order this 22nd day of March, 1973, by a vote of 4-0.

Christan L. Moffett
Christan Moffett, Clerk
Illinois Pollution Control Board