

ILLINOIS POLLUTION CONTROL BOARD

September 5, 1974

ENVIRONMENTAL PROTECTION AGENCY,)
Complainant,)
)
v.) PCB 74-165
)
M & W DISPOSAL COMPANY, INC., an)
Illinois Corporation; J & V DEVELOPMENT)
COMPANY, an Illinois Corporation; and)
MELVIN F. WATSON, an individual,)
Respondents.)

Mr. Jeffery S. Herden, attorney for Complainant.
Mr. Lyman C. Tieman, attorney for M and W Disposal
Company, Inc. and Mr. Melvin Watson.
Mr. Robert Quinn, attorney for J and V Development
Company.

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

On April 26, 1974, the Environmental Protection Agency (Agency) filed a Complaint against Respondents and alleged numerous violations in the operation of a landfill located in Rockdale, Will County, Illinois. In Count I, Complainant charged that Respondents from March 22, 1973, until July 27, 1973, including certain specified dates:

1. Operated the landfill without a permit in violation of Section 21(e) of the Environmental Protection Act (Act).
2. Inadequately fenced the facility in violation of Section 21(b) of the Act and Rule 4.03 of the Rules and Regulations For Refuse Disposal Sites and Facilities (Rules and Regulations).
3. Failed to provide daily cover in violation of Section 21(b) of the Act and Rule 5.07(a) of the Rules and Regulations.
4. Failed to provide final cover in violation of Section 21(b) of the Act and Rule 5.07(b) of the Rules and Regulations.

Additional violations were charged in Count II for the period July 27, 1973, to April 26, 1974, including specific dates. During this period Complainant alleged that Respondents:

1. Failed to provide adequate fire protection, fencing, gates and other measures to control access to the site, and failed to control dust in violation of Section 21(b) of the Act and Rules 314(c), (d), and (f) of the Pollution Control Board's Regulations for Solid Waste (Chapter 7).

2. Failed to provide daily cover in violation of Section 21(b) of the Act and Rule 305 of Chapter 7.

3. Failed to spread and compact refuse as rapidly as it was deposited at the toe of the landfill in violation of Section 21(b) of the Act and Rule 303(b) of Chapter 7.

4. Caused or allowed scavenging operations at the site in violation of Section 21(b) of the Act and Rule 308 of Chapter 7.

In Count III, Complainant alleged that from June 22, 1973, until April 26, 1974, Respondents had not obtained all necessary permits and from March 22, 1973, until April 26, 1974, Respondents had failed to close its facility since necessary permits were not obtained. Both allegations were violations of the former Board order in Environmental Protection Agency v. M and W Disposal Company, #72-467; 7 PCB 379 (March 22, 1973). Point one of that Order, payment of a \$2,500 penalty, had been complied with.

A hearing occurred in Joliet, Illinois, on June 21, 1974; the parties indicated that a tentative settlement agreement had been reached (R-6). The Stipulation and Proposal For Settlement was submitted to the Board in final form on July 12. J and V Development Company owned the land occupied by the landfill (Stipulation and Proposal For Settlement, page 3). The settlement agreement provided for the dismissal of J and V Development Company as a party Respondent because it did not operate the landfill (R-9). The other Respondents admitted as violations most of the charges indicated in Counts I and II; Count III was dismissed "because the Board cannot enforce its own order" (R-12). The two Respondents agreed to pay a \$5,000 penalty (R-9) and comply with all Board regulations. The program of compliance has already been undertaken in that a conditional permit has been issued to Respondents for a new landfill west of the present facility (R-13) and plans are to close down the present site on approximately September 1, 1974 (Stipulation and Proposal For Settlement, page 6). Finally, the Stipulation provided that should the Board fail to approve it and the \$5,000 penalty, that the Stipulation would be held for nought and that no admissions in the Stipulation would prejudice either party in subsequent hearings.

Several witnesses testified at the hearing. An Agency official stated that at his last visit in March 1974, the problem of the inadequacy of daily cover still existed (R-21). Unimpeached citizen testimony vociferously objected to the inconvenience, the odor problems (R-23, 24, 27), the rat problems (R-35), and the serious dust nuisance caused by Respondents in operating the site (R-39, 40).

We reject The Stipulation and Proposal For Settlement worked out between the parties. Lacking further evidence, we believe that the \$5,000 penalty is unreasonably low. This is not the first action brought against Respondents. They should be acutely aware of how to properly comply with our regulations. Citizens have been severely inconvenienced. To accept a \$5,000 penalty on the facts before us would do an injustice to the Board and citizens; it would also encourage others to delay compliance because continued

pollution would be economically expedient. Any future Stipulation and Proposal For Settlement must provide for a higher penalty and assure the Board not only that the old site is no longer operating - or operating within all applicable regulations - but also that the new site is fully complying with the Act and regulations. Agency inspections would be one means to determine this. Before taking final action on any stipulation in this case, the Board must have assurances that the violations and nuisance caused by Respondents' operation have ceased.

Failure to accept this Stipulation will not delay compliance. Respondent is obligated to comply with the law regardless of any order from this Board. Furthermore, our previous Board order against these Respondents mandated compliance. Failure to comply with our previous Order is one factor in determining a penalty in this subsequent, similar cause of action.

ORDER

The Stipulation and Proposal For Settlement is remanded to the parties for further action consistent with this Interim Opinion and Order.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 5th day of September, 1974, by a vote of 4 to 0.


Christan L. Moffett