

ILLINOIS POLLUTION CONTROL BOARD
June 6, 1975

ENVIRONMENTAL PROTECTION AGENCY,)
 Complainant,)
)
 v.) PCB 74-476
)
CLARENCE O. NELSON,)
 Respondent.)

Mr. Michael A. Benedetto, Jr. and Mr. Stephen Z. Weiss, Assistant Attorneys General appeared for Complainant. Mr. Kenneth J. Gumbiner and Mr. Robert F. Casey appeared for Respondent.

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

This matter comes before the Pollution Control Board (Board) upon the Environmental Protection Agency's (Agency) December 17, 1974 Complaint and March 31, 1975 Amended Complaint. Clarence O. Nelson (Nelson) is charged, therein, with operating a solid waste management site without a permit in violation of Rule 202(b)(1) of Chapter 7: Solid Waste Regulations and therefore in violation of 21(b) and 21(e) of the Act. As the Amended Complaint merely conforms to the proof, we grant the Agency's motion to file it.

Nelson is located in Kendall County and takes care of 80% of Aurora's household refuse (R40). Nelson also services Plano, Illinois. Several interested citizens testified to the hardship they and/or their cities would experience if Nelson is shut down. The principal hardship would be increase of costs based upon the greater distance to the next closest landfill (13 to 25 miles) and the higher cost of dumping (\$0.20 more per ton or \$0.35 more per yard). Nelson is open 5 1/2 days per week and takes in 800 cubic yards per day at an average charge of \$0.80 a yard (R233). Mr. C. O. Nelson admits that the landfill has no developmental or operating permit issued by the Agency (R226). Nelson has applied several times for a permit, the first time in 1971 and the latest, in 1974.

Respondent contends that a permit issued by default. Its basis for this contention is that it filed an application on June 28, 1974 and a more information letter was not sent by the Agency until August 22, 1974. Rule 205 pertaining to permit applications does provide for default operating permits in subsection (g) in the event the Agency fails to take final action within 45 days from the filing thereof. An application is deemed filed when received by the Agency (205(f)). No evidence is contained in the record

as to the date the Agency received the application. In addition the record does not state the date on which the application was sent. Rule 205(e) provides that applications be sent via registered or certified mail, return receipt requested. Nelson has failed to carry its burden in proving the elements of a default permit. The Board must find that no default permit issued.

As a violation of 202(b)(1) is not a violation of 21(b) of the Act, see EPA v. E. & E. Hauling, PCB 74-473 (1975), that portion of the Amended Complaint alleging a violation of Section 21(b) must be dismissed.

The Agency's witness, Mr. Beechley, upon cross examination, stated that he had no knowledge of leachate or pollution from the site (201-202). However, from borings taken, Mr. Beechley concluded that "the natural soils at the site were somewhat less than desirable for natural attenuation of leachate." (R207)

In mitigation, the Respondent has attempted to comply with all of the Agency's requests. Nelson has placed drain tiles under the landfill to collect leachate. A plastic liner was installed over the clay and more clay placed on top to collect leachate and drain it into a retention tank. (R266)

The Board finds that Nelson has operated, since July 27, 1974, without a permit and assesses a penalty of \$500.00 against Nelson for said violation of Rule 202(b)(1) and §21(e) of the Act.

Mr. Dumelle will file a Concurring Opinion.

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

ORDER

It is the Order of the Board that:

(a) C.O. Nelson cease and desist from operating its solid waste management site unless it applies for and obtains an appropriate operations permit within 120 days of the date of this order.

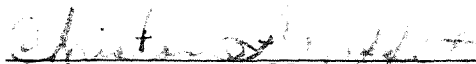
(b) C.O. Nelson is ordered to pay, within 45 days, a penalty of \$500.00 for the violations of Rule 202(b)(1) of the Solid Waste Regulations and Section 21(e) of the Environmental Protection Act found herein. Penalty payment by certified check or money order payable to the State of Illinois shall be made to:

Fiscal Services Division
Illinois Environmental Protection Agency
2200 Churchill Road
Springfield, Illinois 62206

(c) That portion of the Amended Complaint alleging a violation of Section 21(b) of the Act is hereby dismissed.

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 6th day of January, 1975 by a vote of 5-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board