

ILLINOIS POLLUTION CONTROL BOARD  
April 4, 1975

ENVIRONMENTAL PROTECTION AGENCY, )  
 )  
 Complainant, )  
 )  
 v. ) PCB 74-403  
 )  
 TODD McKEE, d/b/a TODD'S )  
 SANITATION SERVICE, )  
 )  
 Respondent. )

Mr. Fredrick Benson, Assistant Attorney General, appeared for the Complainant;

Mr. David H. Adamson III, Attorney, appeared for the Respondent.

OPINION AND ORDER OF THE BOARD (by Mr. Zeitlin)

The Complaint in this matter was filed by the Attorney General for the Environmental Protection Agency (Agency) on October 29, 1974. The Complaint alleges that Respondent operated a solid waste management site in Macoupin County<sup>1</sup> from July 27, 1974 until October 29, 1974 without an operating license from the Agency as required by Section 21(e) of the Environmental Protection Act (Act), and Rule 202(b)(1) of the Pollution Control Board's Solid Waste Rules and Regulations. (Ill. Rev. Stat. Ch. 111 1/2, Sec. 1021(e)(1973); PCB Regs. Ch. 7, Rule 202(b)(1). The operating permit requirement of Rule 202(b)(1) became effective for existing solid waste management sites on July 27, 1974.)

Turning first to preliminary matters, the Board must initially resolve two matters which arose at a hearing held in this case on February 10, 1975. First, the Agency moved under Board Procedural Rule 303(b) to correct the name of the Respondent in this matter. The Agency's oral motion would dismiss as Respondent Todd McKee, and substitute in his place Todd's Sanitation Service, Inc. The Attorney for Todd Sanitation Service, Inc., objected to the Agency's motion, complaining that such a substitution would result in unfair surprise if accomplished at such a late date. Respondent moved orally for dismissal of the cause in this matter based on such surprise, and upon the Agency's lack of diligence in discovering the operator of the site in question.

Rule 303(b) states clearly that misnomer of parties is not a ground for dismissal, and that the name of any party may be corrected at any time. It is clear to the Board that in this matter no surprise was worked upon Respondent and that it would not be unfair to make the substitution requested by the Agency. For that reason, Respondent Todd McKee, d/b/a Todd's Sanitation Service, is hereby dismissed, and Todd's

1. The legal description of the property is, Section 30, Township 7 North, Range 9 West.

Sanitation Service, Inc. (Todd's Sanitation), is substituted therefore.

Secondly, Respondent orally requested a Variance as regards this matter at the conclusion of the hearing. Such a motion clearly fails to meet the requirements of Board Procedural Rule 401 and cannot be given serious consideration by the Board.

Turning now to the factual determinations to be made in this matter, the Board finds that a prima facie case of violation has been made by the Agency. Respondent stipulated at the hearing to the following facts:

1. Respondent did not possess an operating permit issued by the Environmental Protection Agency for the operation of a solid waste management site at any time between the dates of July 27, 1974 and October 24, 1974.
2. Respondent operated or caused to be operated a solid waste management site in Macoupin County on August 5, 1974.
3. Respondent operated a solid waste management site in Macoupin County for two or more days each week between July 28, 1974 and October 19, 1974.
4. Respondent submitted by mail on February 6, 1975, an operating permit application for the site in question (R. 6,7).

Respondent's apparent defense in this matter is that its failure to obtain an Agency operating permit was the result of good faith attempts to comply with other pertinent regulations for the operation of a solid waste management site. Further, Respondent has attempted to show its good faith in attempting to obtain the required permit.

Respondent employed a consulting engineer in April, 1974, to begin work on the permit application (R.37, 54). It is clear however, that Respondent was aware well before that date that an operating permit would be required for the site. At the latest, Respondent was aware of such a requirement in the Fall of 1973(R. 52,64). Further, Respondent testified to the fact that it realized in the Fall of 1973 that an engineer would be required to assist in the permit application process (R. 101,111-12).

(Respondent's Attorney objected to the introduction of copies of letters from the Agency to Respondent, each containing warnings regarding the necessity of a permit, and several containing an April, 1974 deadline for permit applications; the objections were based on best evidence grounds. It is not necessary for the Board to reach decision on this matter, in that

Respondent's testimony on these matters renders such evidence merely cumulative. The testimony of Respondent's President, Mr. McKee, and its Secretary-Treasurer, Mrs. McKee, verify the fact that letters containing such warnings were in fact received by Respondent, regardless of the admissibility of the individual examples offered by the Agency at hearing.)

Further aggravating the failure of Respondent to obtain an operating permit, Mrs. McKee testified that she did not closely read, or pay attention to, the contents of the warning letters sent to Respondent by the Agency. It is clear that such letters did contain the information regarding permit applications, although that information was in a "form letter" context, as described by Mrs. McKee (R. 16-20).

Respondent also testified that it could not know that a consulting engineer would require ten months to make adequate preparations for a proper permit application. But Mrs. McKee did testify to personal knowledge of the fact that Respondent's consulting engineer had never worked on a landfill permit application for a site such as the one in question here (R. 103). Further, while the consulting engineer testified that Respondent fully cooperated with his permit application preparation (R. 50), it is also clear from the consulting engineer's testimony that the permit application could not be completed due, at least in part, to Respondent's failure to finalize a lease for the landfill site (R. 49).

Respondent has also testified through its officers that the reason for delay in retaining an appropriate consultant was a result of inadequate funding. Both Mr. and Mrs. McKee testified that an engineer was not retained until April of 1973 for that reason (R. 52,112).

It is clear from the facts described above that Respondent's failure to obtain the appropriate operating permit resulted from factors within Respondent's control. Respondent has failed to rebut the prima facie case of violation presented by the Agency. The long delay in filing a permit application, when coupled with Respondent's admitted negligence in attending to the permit requirement, militate for the imposition of a penalty in this case.

It should be noted in mitigation, however, that Respondent apparently did in fact undertake considerable steps to bring the site into compliance with other applicable Board Regulations, and that the permit application in question did involve considerable expense for the Respondent. In fact, the Agency did not question Mrs. McKee's testimony that it was necessary for she and Mr. McKee to take out a second mortgage on their home to pay for the engineering fees connected to Respondent's permit application (R. 112). For these reasons, balancing the unexcused delays in application for the permit against the mitigating factor the Board feels that a penalty of \$500 will sufficiently serve the intent of the Act and act as sufficient protection for the permit system.

Considering as we must the factors set out in Section 33(c) of the Act, the Board finds that those considerations provide no excuse for the delays described above, and do not provide further mitigation as regards to the imposition of a penalty. On the contrary, balancing the necessity of a viable permit system with the reasonableness of the efforts required to secure a permit, both a finding of violation and the imposition of a penalty are mandatory. While the site in question here may provide considerable social and economic benefit to the area which it serves, it is of greater benefit to that area and to the state as a whole to have a viable permit system covering the operation of landfill sites.

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

ORDER

IT IS THE ORDER of the Pollution Control Board that:

1. Respondent Todd Sanitation Service, Inc., is found to have operated a solid waste management site in Macoupin County during the period July 27, 1974 to October 29, 1974 without the required operating permit from the Agency, in violation of Section 21(e) of the Environmental Protection Act and Rule 202(b)(1) of the Board's Solid Waste Rules and Regulations.

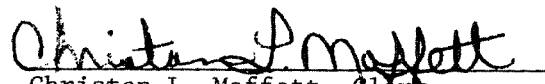
2. Respondent shall pay as a penalty for such violation the sum of \$500, payment to be made by certified check or money order within 35 days of the date of this Order to:

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

3. Respondent shall cease and desist the aforesaid violations, and shall cease operations on, and properly close in accord with all applicable Board regulations, the subject site unless an appropriate operating permit has been issued by the Agency within 120 days of the adoption of this Order.

4. Respondent's oral Motion for Variance is denied.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board hereby certify that the above Opinion and Order were adopted on the 4<sup>th</sup> day of April, 1975 by a vote of 3 to 0.

  
Christan L. Moffett, Clerk  
Illinois Pollution Control Board