

ILLINOIS POLLUTION CONTROL BOARD
March 6, 1975

ENVIRONMENTAL PROTECTION AGENCY)
)
 Complainant)
)
 v.) PCB 74-381
)
VILLAGE OF KARNAK)
)
 Respondent)

Mr. Howard Thomas, Assistant Attorney General, appeared for the Complainant;

Mr. Byron L. Connell, 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 25, 1974. The Complaint alleges violations of Section 21(e) of the Environmental Protection Act, and Rule 202(b)(1) of the Solid Waste Rules and Regulations of the Board, in that Village of Karnak (Karnak) operated a solid waste management site without the appropriate operating permits from the Illinois Environmental Protection Agency (Agency). The site in question is a plot of approximately ten acres in the Village of Karnak, Pulaski County, originally purchased by Karnak on December 7, 1962. Pursuant to Rule 202(b)(1) of the Solid Waste Regulations, operating permits were required for all existing solid waste management sites as of July 27, 1974.

In its answer to the complaint, and its answer to a request for admission, both filed on January 6, 1975, Karnak denied the allegation in the complaint that it was in fact operating a solid waste management site without the required permit. Karnak's answer admitted that it never possessed an operating permit, but denied that it ever operated a solid waste management site. Karnak stated that its activities on the site in question amounted to merely filling and covering an old dump area which has been used by the public for more than thirty years. Karnak also stated that it had fenced the site to prevent indiscriminate dumping by private persons who were not residents of Karnak.

A hearing was held in the matter on January 6, 1975. The Agency and Karnak each presented one witness at that hearing, and each introduced several exhibits supporting its

position. The Agency's witness, Bob Samuel, stated that he inspected the site on two occasions since July 27, 1974. Mr. Samuel's testimony indicated that the site was still in operation on July 29, 1974, and that at least some activity was taking place at the site on December 5, 1974 (R. 40,52). In addition, Mr. Samuel offered two photographic exhibits which tend to support his testimony (Comp. Ex. A, B).

Also introduced at the hearing was a series of letters from the Environmental Protection Agency to the Village of Karnak. These letters, dating from September 18, 1973 and nine subsequent occasions, included notification to Karnak that the Agency considered its site a landfill, for which a permit would be required after July 27, 1974. The letters were specific concerning the permit requirement, and included notice that applications should be submitted to the Agency before April 28, 1974 (R. 56,57; Comp. Ex. C 1-C 10). Karnak stipulated at the hearing to receipt of nine such letters.

Karnak presented as its only witness Robert Spurlock, the Mayor of the Village of Karnak. Mayor Spurlock's testimony was largely concerned with operations of the site prior to July 27, 1974. He testified at some length concerning the efforts of the Village to cover the old dump site (R. 122). But even on direct examination Mayor Spurlock's testimony contains admissions of operation after July 27, 1974. (R. 139). He testified that during period of July 27, 1974 to October 25, 1974 the site was open for at least four hours on Wednesdays and Saturdays, during which time new refuse was accepted at the site if brought in by private individuals. During that time Karnak operated a bulldozer and road grader to cover old and new material which had been dumped on the site (R. 141).

On cross-examination, the following question was put to Mr. Spurlock: "Mr. Spurlock, what happened, what went on at the site after July 27, 1974?" In answer, Mayor Spurlock stated: "July 27? Well, of course, actually nothing went on any different than the regular dumping and filling, you know, and keep covering up as usual. That was our overall purpose and that is what we intended to do if we could stay long enough, just clean up our wasteland and get it covered." (R. 156). Further, when asked what types of materials were being brought to the site, Mayor Spurlock stated that dumping was restricted to citizens of Karnak, who brought in "just stuff out of the kitchen" (R. 157). On redirect examination, Mayor Spurlock stated that the villagers were bringing in "about a ton a week" of the "new stuff" (R. 158).

The record in this matter is replete with other such admissions that Karnak accepted refuse or garbage at its site after July 27, 1974. It would serve no purpose to catalogue all such admissions. Karnak has not denied that individuals were allowed to dump on the subject site after July 27, 1974. Its defense, instead, is that the facts as stipulated or admitted do not constitute the operation of a solid waste management site.

Karnak presented no evidence or direct argument that its operations could be characterized as anything except the operation of a solid waste management site. Instead, Karnak has attempted to show that its operations have historically been of benefit to the environment. While the cleanup of an old dump site is laudable, such evidence does not approach the question directly.

Section 21(e) of the Act states that no person shall "conduct any refuse-collection or refuse-disposal operations, except refuse generated by the operators own activities, without a permit granted by the Agency..." Rule 202(b)(1) states that "no person shall cause or allow the use or operation of any existing solid waste management site without an Operating Permit issued by the Agency not later than one year after the effective date of these Regulations." Although there has been no evidence presented in this matter tending to show that Karnak itself conducted dumping on this site, the Board has previously determined that one who "allows" dumping may be seen to have engaged in the operation of the landfill. EPA v. Rafacz Landscaping and Sod Farms, Inc., PCB 72-196, October 24, 1972, 6 PCB 31. There is no question that an individual can be held liable for dumping conducted by others, EPA v. Doveke, et al. PCB 72-130, August 22, 1972, 5 PCB 219, 220. The operations of Karnak at this site unquestionably constituted the operation of a solid waste management site within the meaning of the Act and the Regulations. Karnak's intentions as to such operation are immaterial. The violation here is clear. Karnak has admitted in its pleadings and at the hearing that no permit was ever received or ever applied for (R. 53).

The Board does not in this Opinion and Order reach any decision as to whether the operation by Karnak after October 25, 1974 constitutes the operation of a solid waste management site. The admission made by Karnak covers the period through October 25, on which date the complaint in this matter was filed. The complaint alleges violations only through the date on which the complaint was filed. Although the Agency introduced evidence as to operation of the site on December 5, 1974, no violation has been alleged for that date. For that reason, it is unnecessary to decide whether operations constituting the closure of a solid waste management site, and not including further dumping, do or do not constitute continuing operations of such a site. Proof presented by

the Agency as to operations on December 5, and statements made by Karnak regarding its activities on that date, are not material to the case before us now.

Karnak's intent is material, however, in determining the penalty to be levied for the violation described above. Karnak's intent in cleaning up an old dump site is certainly laudatory, and could lead to the conclusion that a penalty might not be warranted in this case, if no further issues in this regard were before the Board. The difficulty here lies in the fact that Karnak was repeatedly warned that the Agency considered its site a solid waste management site, and that a permit would be needed after July 27, 1974. Further, it can be inferred from the testimony of Karnak at the hearing that Karnak realized that its site might, at least, fall within the definition of a solid waste management site under the Act and the Rule. (See, e.g. R. 134, 149, 145). Weighing both the intent of Karnak to benefit the environment and the distinct possibility that Karnak's violations were purposefull, it is the Opinion of the Board that a penalty of \$100 will serve to insure compliance with the Act and prevent further unlicensed operation.

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

ORDER

It is the Order of the Pollution Control Board that:

1. Respondent Village of Karnak is found to have operated a solid waste management site in violation of Section 21(e) of the Environmental Protection Act, and Rule 202(b)(1) of the Solid Waste Rule and Regulations, by operating said site without an appropriate operating permit having been issued therefore by the Illinois Environmental Protection Agency, during the period from July 27, 1974, through and including October 25, 1974.
2. Respondent Village of Karnak shall cease and desist all such violations, and shall take proper steps for the closure of the subject site in accordance with the Board's Solid Waste Regulations.
3. Respondent Village of Karnak shall pay as a penalty for said violations the sum of \$100, within 30 days of the adoption of this Order, payment to be made by certified check or money order to:

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

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board hereby certify that this Opinion & Order were adopted on the 6th day of March, 1975 by a vote of 3 to 0.

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