

ILLINOIS POLLUTION CONTROL BOARD  
December 20, 1977

ENVIRONMENTAL PROTECTION AGENCY, )  
)  
Complainant, )  
)  
v. ) PCB 77-89  
)  
R. H. MOON, d/b/a R. H. MOON )  
and SONS, and JACK HORN, )  
)  
Respondents. )

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

Respondents in this case have been accused of operating a refuse disposal site without an operating permit issued by the Agency, in violation of Section 21(e) of the Act and Rule 202(a) of the Board's Solid Waste Regulations. A hearing was held at the McDonough County Courthouse in Macomb, Illinois on August 5, 1977.

The subject site is located at the end of Canyon Drive in Macomb. At one time the entire site was located past a drop off, but it has been filled in for the past thirty years. The fill has been comprised of dirt, demolition materials, and trash (R.26). Some of the material has been deposited by Mr. R.H. Moon and other material has been dumped with his permission. No one has ever been given permission to dump trash, but quite a bit has been placed over the years.

Mr. Moon feels that he should not be held liable for any violation because his activities fall under the exemption provided in Section 21(e) of the Act and because the materials he placed at the site did not constitute refuse. Mr. Horn argues that since he does not own the site, he should not be held accountable for its operation. Neither Respondent feels that the unpermitted dumping of trash by unknown third parties should be blamed on them.

The Board is faced with a situation where no one wants to accept responsibility for creating an unsightly dump. The owner of the site, stepmother to Mr. Horn, is confined to a nursing home in Washington, Indiana and probably has no community interest in its operation. Consequently this action can focus only on the question of whether or not the Respondents have violated the Act and the regulations. Any cleanup or proper operation must await a separate proceeding.

Mr. Moon stated that he had been in the excavating business for many years and that he had engaged in the demolition trade as well (R.11). He admitted that he had been disposing of dirt and concrete at the site for many years with the permission of Mr. Horn (R.27,30,40). Mr. Moon also levels the site with some of his excavation equipment (R.27) and stated that he "...let the CIPS dump dirt and cement in there, otherwise a neighbor slips in there" (R.18).

The Board has construed the exemption in Section 21(e) of the Act and has stated that it is very narrow. In Environmental Protection Agency v. City of Pontiac, 18 PCB 303,306 (July 7, 1975), the Board rejected Pontiac's contention that it was exempt because it owned the refuse. The Board stated as follows:

"Section 21(e) and its exemption must be interpreted consistently with the purposes of the Act. Title V, Section 20 states this purpose to be prevention of pollution or misuse of land arising out of improper refuse disposal. To achieve this end the Regulations establish a permit system controlling refuse-disposal activities. The intent of Section 21(e) was to exempt minor amounts of refuse which could be disposed of without environmental harm on the site where it was generated. There was no intent to create a gap in the permit system of the magnitude suggested by Pontiac. To interpret the exemption as allowing the municipality to dispose of any refuse it owns without a permit will mean that large quantities of varied materials could be indiscriminately deposited at a waste-disposal site. This obviously circumvents both the permit system and the purposes of the Act."

Mr. Moon's contention that excavating and building demolition wastes are not refuse has also been rejected by the Board [See Environmental Protection Agency v. Rafacz Landscaping Sod Farms, Inc., 6 PCB 31 (October 24, 1972)].

Since his activities were not exempt and the discarded material was refuse, Mr. Moon has violated the Act and Rule 202(a) if it can be established that he was an operator. Since the definition of operator in Rule 104(1) of the Board's Solid Waste Regulations includes any person who manages a solid waste management facility, Mr. Moon's supervisory activities would fit him in this category.

Mr. Horn's capacity as an operator is less clear. Although he never owned this property, he did negotiate on behalf of his father when the site was purchased (R.63). Mr. Moon stated that he received permission from Mr. Horn to continue to fill the land and that he acted pursuant to this permission. Since Mr. Horn's father died on October 11, 1974, he has obviously not been handling his affairs since that date. Consequently Mr. Horn cannot be found to have acted as an operator during the period of this complaint.

Mr. Moon's violations constitute a threat to the Agency's permit system. Those people who contemplate dumping at an unpermitted location must be shown that they cannot unilaterally decide what is refuse and what is not. The Board's Regulations which govern the operation of landfills never will be generally adhered to unless uninformed and unpermitted operations are closed. In this case the Board cannot order that this site be properly covered or that the Respondents perform any remedial action. Some future action to accomplish proper closure is necessary. However the Board can impose a penalty which will act as a deterrent to Mr. Moon and any other person who is considering the same sort of activity.

Mr. Moon claims that he was advised by a representative of the Agency in 1974 that no permit was needed for his filling activities (R.33). The Agency denied ever giving this advice and stated that Mr. Moon was told in June, 1975 that he needed a permit (R.74,75,120). Although Mr. Moon is no longer engaged in the excavating business, he did testify that he was maintaining a stockpile of cover dirt at the site (R.27) and that he still pushed over the piles of refuse periodically. It is apparent that Mr. Moon decided not to look into getting a permit. There should be no reason for any Agency employee to advise Mr. Moon that no permit was needed since this advice would have been erroneous.

Mr. Moon enjoyed the benefit of disposing of excavation and demolition wastes from his own business free of charge. Although the savings to Mr. Moon have not been quantified in the record, they are real nonetheless and shall be considered by the Board in setting a penalty. A penalty of \$200 shall be levied against Mr. Moon.

The record does not show any economic dislocation that would flow from closing this site. There is no evidence of jobs associated with this facility or any indication that problems in solid waste management in McDonough County would result from closure.

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

#### ORDER


- It is the Order of the Pollution Control Board that
1. Respondent R.H. Moon is hereby found to have violated Section 21(e) of the Act and Rule 202(a) of the Board's Solid Waste Regulations.
  2. Respondent R.H. Moon shall cease and desist immediately from any further violations.

3. Those portions of the complaint charging Respondent Horn with violations of Section 21(e) of the Act and Rule 202(a) of the Board's Solid Waste Regulations are dismissed.

4. Within 30 days of the date of this Order, Respondent R.H. Moon shall forward the sum of \$200 by certified check or money order to:

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

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 20<sup>th</sup> day of December, 1977 by a vote of 5-0.

  
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Christan L. Moffett, Clerk  
Illinois Pollution Control Board