

ILLINOIS POLLUTION CONTROL BOARD
February 11, 1976

ENVIRONMENTAL PROTECTION AGENCY,)
)
 Complainant,)
)
 v.) PCB 75-258
)
 RICHARD C. McCORMICK,)
)
 Respondent.)

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

This case comes before the Board on a Complaint filed by the Environmental Protection Agency on June 30, 1975. The Complaint alleges violations of Section 21(e) of the Environmental Protection Act (Act) and Rules 201 and/or Rule 202(a) of the Board's Solid Waste Regulations. A hearing was held on September 4, 1975 at which a Stipulation of Facts (Stipulation) including eight exhibits were admitted into evidence. Mr. McCormick appeared without counsel. Additional Exhibits A and B were submitted on October 21, 1975 pursuant to agreement of the parties (R. 5).

In paragraph 4 of the Stipulation, Mr. McCormick admits that he did not possess, between January 14, 1975 and June 30, 1975, a permit for the operation of his solid waste management site. In paragraph 1, Mr. McCormick admits to ownership of the site in question. In paragraphs 12, 14 and 15 Mr. McCormick admits that the site was in operation on January 14, 1975, April 9, 1975, and June 10, 1975, respectively. These admissions establish all of the facts necessary to find a violation of Section 21(e) of the Act.

Exhibit A is a letter from the Agency acknowledging receipt of Mr. McCormick's application for a development permit dated June 21, 1974. This letter set out 15 inadequacies in the application and denied issuance pending receipt of complete information. Additional Exhibit A is another letter from the Agency dated September 19, 1975. In this letter the Agency, having received the information submitted, denied the permit request. It is clear from this record that a development permit was necessary prior to the operation of Mr. McCormick's site. Violation of Rules 201 and 202(a) of the Board's Solid Waste Regulations have been shown.

It can be argued that Mr. McCormick's previous attempt to apply for and obtain a permit should be considered in mitigation of these violations. However, as is shown in Exhibit A, F, and G, Mr. McCormick failed to supply information essential to the completion and final analysis of his development plans, in spite of numerous warnings from Agency personnel concerning the potential violation of Board regulations (Exhibits A and F; Stipulation paragraphs 6, 13, 14, 15, and 16). Without the information necessary to enable the Agency to determine the viability of a proposed site, a permit "application" is meaningless. The submission of such information is much more than a costly formality. It is not a matter of "bureaucratic red tape". This fact is excellently illustrated in the present case.

Additional Exhibit A is a letter from the Agency's Permit Section discussing complications inherent in Mr. McCormick's plan for above grade (area) filling:

"Area fills have a propensity to leach along the base. Your plans treat this problem with a complicated collection and treatment and/or recirculation system involving what certainly must be high installation and maintenance costs".

* * * * *

"However, if your site were trenched, the need for leachate collection would be entirely eliminated. Added benefits include an increased site life and reduced development costs. Furthermore, spot samples from our files indicate that overall conformance with the Rules and Regulations is best achieved by trenching (as opposed to area filling)."

It is thus shown that Mr. McCormick's development plan was not acceptable from an environmental point of view. It is also shown that the plan may not have been acceptable from a purely economic point of view if he had looked into the matter adequately.

The integrity of the permit program is essential to the Act's program for the protection of the Illinois environment. Solid waste management sites have a substantial social and economic value. However, that value is diminished to the extent that the site is not developed properly to prevent the pollution of land and contamination of water supplies. This is especially true because the cost of obtaining the necessary permit is not prohibitive. As such, the costs involved in obtaining the development and operating permits represent not only a cost of doing business in the State of Illinois, but also the exercise of sound business judgment.

A penalty of \$2,500 is especially necessary in this case, to protect the integrity of the permit system; to demonstrate to Mr. McCormick that he will not profit by opting to violate Board regulations. As stated in the Act, Ill. Rev. Stat. Ch. 111-1/2 §1002(b) as amended, "It is the purpose of this Act...to assure that adverse effects upon the environment are fully considered and borne by those who cause them". Mr. McCormick, by operating without a permit has explicitly failed to consider the adverse environmental effects caused by his site and has thus violated both the form and the very substance of the permit requirement.

A cease and desist order is also warranted in this case. Mr. McCormick will be ordered to cease and desist from the operation of his site until such time as it has been issued necessary development and operating permits. This is necessary because at issue here is not merely operation without a permit. The basis of the permit denial is the inadequacy of Mr. McCormick's plan for the development of the site. The operation of this site, therefore, poses a threat to the environment. This is all of no surprise to Mr. McCormick (see Agency warnings in Exhibits A and F, and Stipulation paragraphs 6, 13, 14, 15 and 16, and Additional Exhibits A and B) who has been apprised of the need for a permit and of potential adverse effects on the environment.

The record bears no facts which would indicate that the cessation of operations at the McCormick site would result in any substantial hardship to the communities served. The only pertinent fact is that the nearest site is in East Peoria, and is operated by Tazewell County Waste Management, Inc. (R. 4). Paragraph 2 of the Stipulation states that Respondent's McCormick Disposal Service serves approximately 30 communities in the central Illinois area, and dispose these collected wastes at the site in question. The Board has been presented with no facts which would indicate that any extreme hardship would fall upon either Mr. McCormick or his customers because of an order to cease and desist from operating without a permit. In this case, the violation of the Act and the Board's regulations, coupled with the potential for land pollution and subsequent water contamination far outweigh any mitigating factors.

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

ORDER

1. Respondent Richard C. McCormick is hereby found to have violated Section 21(e) of the Environmental Protection Act and Rules 201 and 202(a) of the Board's Solid Waste Regulations.

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

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

3. Respondent Richard C. McCormick shall cease and desist from the aforesaid violations within ninety (90) days from the date of this Order, unless all appropriate permits have been obtained from the Illinois Environmental Protection Agency.

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 11th day of February, 1976, by a vote of 4-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board