

ILLINOIS POLLUTION CONTROL BOARD

May 11, 1978

ENVIRONMENTAL PROTECTION AGENCY,)
)
Complainant,)
)
v.) PCB 77-319
)
JACK HARDEN, d/b/a JACK HARDEN)
DISPOSAL,)
)
Respondent.)

MR. JOHN W. VAN VRANKEN AND MR. STEPHEN T. GROSSMARK, ASSISTANT ATTORNEY GENERALS, APPEARED ON BEHALF OF THE COMPLAINANT. MR. WILLIAM T. PANICHI APPEARED ON BEHALF OF THE RESPONDENT.

OPINION AND ORDER OF THE BOARD (by Dr. Satchell):

This matter comes before the Board upon a December 2, 1977 complaint filed by the Environmental Protection Agency (Agency). Respondent is charged with a violation of Section 21(f) of the Environmental Protection Act (Act) for disposing of refuse at a site doing business without an Agency operating permit. A public hearing was held on February 17, 1978 at the Christian County Courthouse in Taylorville.

Since 1969, Respondent has owned and operated a refuse collection and disposal service (R. 95). He has approximately 900 customers (R. 97) in the villages of Bullpit, Kincaid, Pawnee, and Tovey (R. 26). Respondent's operation consists of two one-ton trucks with 17 cubic yard refuse bodies on each (R. 28); together these trucks average three to five loads per week (R. 32).

During the term of the alleged violation, Respondent used two solid waste management facilities to dispose of his refuse (R. 33). For roughly one-third of his loads, Harden went to the Buerkett landfill in Springfield (R. 103); the remainder of the time, he used the Taylorville landfill that is the subject of this case (R. 106). Evidence presented showed that the Taylorville landfill was closer to the places where the refuse was collected and also charged less per load (Comp. Ex. 1, R. 33, 34, 55).

The Taylorville landfill was the subject of a previous matter before the Board in EPA v. Harold Broverman and Theodora Baker, PCB 76-114 (Nov. 10, 1977). In that case Broverman & Baker were found to have operated the Taylorville landfill without an Agency operating permit as required by

Rule 202(b)(1) of Chapter 7: Solid Waste Regulations and Section 21(e) of the Act. The Respondents there were ordered to obtain an operating permit by March 10, 1978 or have the site closed.

Respondent has admitted that he used the Taylorville site approximately two to three times per week during part of the period from April 1, 1977 to the date of the filing of the complaint (R. 30, 107). Agency representatives actually observed his trucks there on June 14 (R. 42), August 22 (R. 48), and August 23, 1977 (R. 48). A letter sent during August 1977 and an enforcement notice sent on September 14, 1977 informed Harden of the unpermitted status of the Broverman site, the violations of Section 21(e) and 21(f), the availability of other landfills that did have permits, and the consequences if he did not cease dumping at the Taylorville landfill (Comp. Ex. 2, 3). In mitigation he has shown that after receiving the letter and enforcement notice from the Agency, he slowed his use of the Taylorville landfill in September and quit using it altogether at the end of October (R. 40).

Respondent now exclusively uses the Buerkett site in Springfield to dispose of refuse (R. 105). This landfill is properly licensed (Comp. Ex. 2).

The Respondent also contends that he was not aware that the Taylorville landfill was an illegally operated facility until he received the enforcement notice. Even after the notice, Respondent was confused as to the site's status. This uncertainty is attributable to the existence of a development permit for the site, Broverman's assurance that the site was operating legally because the Agency did not comply with Section 39 of the Act by specifying reasons for denial of a permit, and the actual daily use of the site even after the Broverman suit was instituted.

Section 21(f) of the Act states that no person shall: "dispose of any refuse, or transport any refuse into this State for disposal, except at a site or facility which meets the requirements of this Act or of regulations thereunder." Respondent admits that he disposed of refuse at the Taylorville landfill during the term alleged in the complaint. He contends however, that the Agency did not carry its burden in establishing a 21(f) violation since no proof established that the facility was operating without a permit. A motion to dismiss was made at the hearing (R. 88); its basis is that the violation established in EPA v. Broverman and Baker predates the period of Harden's alleged violation and is therefore not relevant to Respondent's case. The Board, in reviewing both the record before it now and its decision in Broverman, concludes that the Agency did satisfy its burden. Testimony from several witnesses indicates the permit status of Broverman has not changed in the last year (R. 50-51). After August 1977, Harden knew that the site had no operating permit (R. 99). His reliance on

Broverman's word and continued use of the site carries consequences for which he must accept responsibility. As for reliance on a permit in default of Section 39 compliance, Broverman, at R. 111, admitted he received notice of reasons for denying the operating permit. Having presented all this evidence, the Agency has met its burden. Beyond that, the Respondent has the burden of rebutting and no clear evidence--for example, an operating permit--was presented. In deciding to deny the motion to dismiss, the Board logically finds Respondent in violation of Section 21(f).

In making a final determination in this case the Board must consider the factors of Section 33(c) of the Act. There is no doubt that refuse collection is a valuable service to the community; however, delivering to an unpermitted landfill site increases the potential for rats and other vectors and for water pollution. Mr. Harden did quit using the site around November 1, 1977 which is a mitigating factor. Respondent did continue to use the site after receiving notice of the violations. He did not make any effort to contact the Agency to inquire about the propriety of dumping at the Taylorville landfill (R. 109). The fact that Respondent is now using a permitted landfill shows that compliance is technologically and economically feasible. Respondent's attorney in closing attempted to compute what Respondent might have saved by using an unpermitted site. He assumed three trips a week for twelve weeks from August to November and arrived at \$63.00; however, the complaint runs from April. At a benefit of \$5.30 per truck (R. 141, 151) the figure should be much larger than \$63.00. For these reasons the Board concludes that a \$200.00 penalty is reasonable.

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

ORDER

It is the Order of the Pollution Control Board that:

1. Respondents motion to dismiss is hereby denied.
2. Respondent has violated Section 21(f) of the Act by disposing of refuse at a facility operating in violation of the Act and Regulations adopted by the Board.
3. Respondent shall pay a penalty of \$200.00 within 35 days of the date of this Order payable by certified check or money order to:

State of Illinois
Fiscal Services Division
Illinois 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 11th day of May, 1978 by a vote of 5-0.

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