

ILLINOIS POLLUTION CONTROL BOARD
February 15, 1979

ENVIRONMENTAL PROTECTION AGENCY,)
)
 Complainant,)
)
 v.) PCB 78-112
)
CITY OF MOUNT CARMEL, an Illinois)
Municipal Corporation,)
)
 Respondent.)

MR. REED NEUMAN, ASSISTANT ATTORNEY GENERAL, APPEARED ON BEHALF OF THE COMPLAINANT.

MR ROBERT M. KEENAN, JR., ATTORNEY AT LAW, APPEARED ON BEHALF OF THE RESPONDENT.

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

This matter comes before the Board upon a complaint filed April 20, 1978 by the Environmental Protection Agency (Agency); The complaint alleges that Respondent owns a solid waste management site located within the Northeast Quarter of Section 22, Township 1 North, Range 12 West of the Second Principal Meridian in Wabash County, Illinois; that this site has been closed since on or about February 1, 1977; and that Respondent has failed to place final cover at the site in violation of Rules 301 and 305 of the Chapter 7: Solid Waste Regulations (Chapter 7) and Sections 21(a) and 21(b) of the Environmental Protection Act (Act). A hearing was held on October 26, 1978.

At the hearing the parties stated they had agreed to a stipulated set of facts. These facts were then presented by statements from the attorneys for the parties. Exhibits were presented which included an earlier agreement between the parties (Jt. Ex. 3); however, no written submission of the stipulated facts was made.

The following facts were presented in statements made at the hearing and in the joint exhibits placed in evidence. Respondent operated or caused to be operated a solid waste management site on the property in question from on or about December 1, 1971 to on or about January 31, 1977 (Jt. Ex. 1 and 2). The site was operated under contract by Crawford County Disposal, Inc. (later assigned to Wabash County Disposal, Inc.). The site,

approximately twenty acres, was purchased in 1972 by the City apparently with the recommendation of the Agency and the same year an operating permit was received in the City's name (R. 6). The Agency was concerned with operation of the site and a compliance conference was held in November 1976 (R. 7). Because of operational problems and especially ground water problems that had arisen it was agreed that the site should be closed. An agreement between the parties, Joint Exhibit 3, determined that no refuse would be accepted after January 31, 1977 and proper final cover would be placed by no later than April 30, 1977. This agreement further provides that quarterly water monitoring reports were to be submitted to the Agency. These analyses were to be from both the east and the west wells. The Agency agreed to forbear from bringing an enforcement action based on an October 26, 1976 notice upon the express condition that the City properly close the site as set out in the agreement.

Refuse was no longer accepted after January 31, 1977; however, the City had trouble getting the contractor, Marvin Wilder, to comply with the agreement (R. 8). In the summer of 1977 some covering was done by the City. Of the twenty acres at the site approximately thirteen have been used for landfill activities and require cover. The Agency estimates that there is an average of one foot of cover on the filled portions of the site (R. 9). There are few areas of actual exposed refuse (R. 9). The Agency estimates that fifteen thousand to twenty thousand cubic yards of cover material are needed at the site. The Mayor of Mount Carmel estimates if the cover material comes from the remainder of the site the cost could run as high as \$25,000 (R. 10). If the material is brought in from outside the site the cost could triple (R. 10). There is a monitoring well at the east end of the site from which the Agency has been getting regular reports, but reports from the west side of the site have been lacking (R. 10).

The City has been unable to enforce its contract for covering the site. The City sought the advice of a Farm Extension Adviser (Adviser) for problems which might adversely affect crop protection (Ex. 8). He recommended against taking the additional material from the other end of the site (R. 13, 14). The Adviser stated this would create a swamp at one end of the site and would not do that much for the other end which he feels is valuable farmland as is (R. 14). The City has put the property out for bids, the highest of which was slightly in excess of \$15,000 (Jt. Ex. 7). The City feels that further cover is not necessary and should not be required (R. 22). While the City

contends on the basis of bid values for the land for agricultural production and a "walk over" inspection by an agricultural extension adviser that no further cover is required, the Agency apparently brought this matter before the Board based on at least fifteen Agency inspections made during the period January 14, 1975 to November 10, 1977 (Jt. Ex. 1, No. 8). The Agency asks that cover be placed and that a performance bond be required (R. 20).

It is apparent in this case that the Respondent has been and is in violation of Rule 305(c) of Chapter 7. Respondent is asking for a permanent variance concerning cover. This is not a proper proceeding for a variance. In addition, the Board has no authority to grant a permanent variance. Respondent has also failed to consider the leachate problem which can result in water pollution problems. The fact that the land is usable as farmland shows social and economic value; however, such a use does not automatically resolve all the pollution problems associated with a sanitary landfill and the potential for public injury. The Agency considered the site suitable when it granted a permit; however, the fact that the lower portion of the site would become swampy if cover material is removed indicates a high probability that the ground water would become polluted without adequate cover. There is no question that applying final cover is technically practicable. The Board has not been presented with a great deal of economic information. Certainly the cost is not negligible; however, the fact that the City originally undertook operating or causing the operation of a sanitary landfill indicates an ability to afford the costs accrued.

The Board finds Respondent in violation of Rules 301 and 305(c) of Chapter 7 and Sections 21(a) and 21(b) of the Act. The Board will require Respondent to place proper final cover as required by Rule 305(c) within 180 days of this Order. Respondent will be required to execute a performance bond of \$25,000 in a form satisfactory to the Agency. In light of the factors of Section 33(c) of the Act and the amount of money required to reach compliance the Board will not assess a penalty in this case.

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. The City of Mount Carmel is found to be in violation of Rules 301 and 305(c) of the Chapter 7: Solid Waste Regulations and Sections 21(a) and 21(b) of the Act.
2. Respondent shall provide cover in compliance with Rule 305(c) of Chapter 7 within 180 days of this Order.
3. Respondent shall post a performance bond in the amount of \$25,000 within thirty-five days of this Order in a form satisfactory to the 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 15th day of February, 1979 by a vote of 3-0.

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