

ILLINOIS POLLUTION CONTROL BOARD  
November 10, 1976

ENVIRONMENTAL PROTECTION AGENCY, )  
 )  
 Complainant, )  
 )  
 v. ) PCB 76-19  
 )  
 HARVEY L. WILHELMS, )  
 )  
 Respondent. )

Ms. Helga Huber, Assistant Attorney General, appeared on behalf of the Complainant.  
Mr. Peter Weygandt appeared on behalf of the Respondent.

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

This matter comes before the Pollution Control Board (Board) upon a complaint filed on January 21, 1976 by the Environmental Protection Agency (Agency) alleging that Respondent owns and has operated a solid waste disposal site in the Northwest Quarter of the Southwest Quarter of Section 3, Township 26-27 North, Range 8 East in Stephenson County, Illinois; that on ten named dates from November 15, 1973 to September 16, 1975 Respondent failed to place final cover in compliance with Rule 305(c) of the Chapter 7: Solid Waste Regulations (Regulations) and Section 21(b) of the Environmental Protection Act (Act); and that Respondent ceased operating his solid waste disposal site in the fall of 1973 and has failed to file a detailed description of the site including a plat with the appropriate recording authority in Stephenson County in violation of Rule 318(c) of the Regulations and Section 21(b) of the Act. On February 10, 1976 the Agency filed a Request for Admission of Fact. This request went unanswered by Respondent. Under the Board's Procedural Rule 314 the matters of fact requested are admitted unless a response is made within twenty days of service. Under this Procedural Rule Respondent is found to have admitted the allegations of the complaint.

A hearing in this matter was held on June 8, 1976. The facts of the complaint were reaffirmed in testimony by Respondent (R. 16, 17, 20, 21, 22). The Board finds that Respondent is in violation of Rules 305(c) of the Regulations and Section 21(b) of the Act. The allegation of violation of Rule 318(c) of the Regulations will be dismissed. Rule 318(c) calls for filing a plat upon closure of the site; as the site was not properly closed there could be no requirement to file the plat. See EPA v. Gooder-Henrichson Company, Inc. 26 PCB 355 (1976).

Prior to determining what remedy is appropriate in this case the Board must consider the factors of Section 33(c) of the Act. The site is two miles east of Freeport and is one half to one mile off the highway (R. 34). The refuse in the site consists of scrap, tires, refrigerators, dryers, and other items that are past use (R. 17). The area containing the refuse was originally a sand and gravel pit with a depth of approximately forty feet (R. 32). This depression has been in existence approximately forty years (R. 32). It does not flow into any stream and no water gathers or stands on the site (R. 32, 33). The refuse was deposited in an attempt to fill in the void (R. 33). Filling in this area with refuse and not following proper procedures can result in water pollution. Water in the form of precipitation running through the refuse will produce leachate. The leachate will flow through the permeable sand and gravel on which the refuse rests and on into the ground water flow. These materials have been on the property approximately three years (R. 37). There was no evidence presented actually showing contamination; however the potential for damage in a situation such as this is great.

Respondent did shut down the site for acceptance of refuse when the Agency sent notice on May 10, 1973 that a permit was necessary to run a solid waste management site (R. 17, 18). Some cover, consisting of dirt and gravel from the site, was applied in May 1974 (R. 19, 20). This covered about thirty percent of the site (R. 20). Respondent has contracted with Ralph Helbin to cover the area (R. 24). Some fill has already been brought in (R. 24). Mr. Helbin stated that if sand and gravel would be satisfactory for a base with clay over the top the job could be finished earlier (R. 24). Mr. Helbin further stated that fill is difficult to get because most of the buildings built in the area are on low ground and builders have to bring in fill (R. 25). The sources for fill are also seasonal, available more readily April through October (R. 25, 26). Mr. Helbin estimated if he could use sand and gravel the job could be done in about two weeks, if other fill was required it might extend to two years before fill would be available (R. 26, 27).

The site is a poor one for a waste management site. There is much potential for leachate to flow into the ground water and adequate cover material is not readily available. Using sand and gravel for cover will not prevent the leaching.

The fact that Respondent has contracted to have the refuse covered shows that compliance is economically and practically reasonable. The site in this case serves no social or economic purpose and is a potential threat of pollution.

Respondent has indicated a desire to bring the site into compliance and to make the land usable (R. 38). Respondent has been dilatory in providing cover; however, he did cease dumping when he discovered he needed a permit. Under these circumstances the Board finds that a penalty of \$300 is sufficient to aid the enforcement of the Act. Respondent shall also be required to bring the site in question into compliance with the Regulations and the Act within 60 days of this order.

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

#### ORDER

It is the order of the Pollution Control Board that:

1. Respondent is found to be in violation of Rule 305(c) of the Solid Waste Regulations and Section 21(b) of the Act.
2. The allegation of violation of Rule 318(c) of the Solid Waste Regulations is dismissed.
3. Respondent shall cease and desist any further violations of the Regulations and/or the Act.
4. Respondent shall bring the site in question into compliance within 60 days of this order.
5. Respondent shall pay a penalty of \$300 for the aforementioned violations within 35 days of this order. Payment shall be made by certified check or money order payable to:

State of Illinois  
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 the above Opinion and Order were adopted on the 10<sup>th</sup> day of November, 1976 by a vote of 5-0.

  
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Christan L. Moffett, Clerk  
Illinois Pollution Control Board