

ILLINOIS POLLUTION CONTROL BOARD  
July 7, 1977

ENVIRONMENTAL PROTECTION AGENCY,        )  
  )  
                                  Complainant,        )  
  )  
                                  v.                    )  
  )  
  )  
R. E. JOOS EXCAVATING CO., a            )  
Delaware Corporation,                    )  
  )  
  )  
                                  Respondent.        )

PCB 76-262

Mr. Patrick J. Chesley, Assistant Attorney General, appeared on behalf of the Complainant.  
Mr. James H. Bunce appeared on behalf of the Respondent.

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

On October 22, 1976 the Environmental Protection Agency (Agency) filed a complaint alleging R. E. Joos Excavating Company has sporadically run a refuse disposal site in violation of Rule 202(b)(1) of the Solid Waste Regulations (Regulations) and of Section 21(e) of the Environmental Protection Act (Act). A hearing was held on April 20, 1977. At that time the parties presented to the Board a stipulation of facts upon which to base the decision of this case. Also the filing of an amended complaint to conform the complaint to the proof was agreed to by the parties (R. 14).

The stipulated facts provide that Respondent's principal business is excavating but the company also engages in land clearing, demolition and general trucking. Respondent employs approximately 30 people. Respondent operates a sand and gravel pit of approximately four acres on Section 26, Township 9 North, Range 7 East of the Fourth Principal Meridian, Peoria County, Illinois.

In the process of operating the sand and gravel pit, Respondent excavated a large trench commencing at the road adjoining the premises and continuing back from the road wherein it dumped trees, brush and other growth from clearing operations at the site. Dirt, gravel and silt from the sand

pit operations was also dumped. Usable sand is trucked away, though most of the sand has now been depleted. In February 1968 Respondent began dumping dirt, broken concrete, tree stumps and other material generated from the activities at the sand and gravel pit. Occasionally demolition waste from Respondent's other projects was also dumped. All waste deposited was from Respondent's own activities. In 1969 Respondent opened the area to outsiders. In 1970 Respondent received a permit from the Department of Public Health. In 1974, prior to the expiration of Respondent's permit, Respondent applied for a new permit from the Agency. This permit was denied. Respondent's permit expired on July 27, 1974. Since that date only Respondent has placed waste material at the site, specifically material in connection with its business of excavating and demolition. This activity has been sporadic but has included the dates set forth in the complaint.

At no time since the inception of activities at the site in 1968 have any food materials, garbage or other objects likely to encourage vector harborage been dumped by Respondent, or, to Respondent's knowledge, anyone else.

Respondent acknowledges Agency inspections and receipt of copies of those inspection reports. Respondent also received correspondence from the Agency notifying him of the existence of violations. After a letter threatening legal action and a fine on October 1, 1976 Respondent requested information as to procedure for obtaining a permit. Respondent was in the process of following the Agency procedure when the complaint herein was filed. At no time prior to the filing of the complaint was Respondent told to close the dump and was only advised that it might be in violation of the Act.

The parties further stipulated that the operation by the Respondent of the site is of social and economic value. The use of the site does not interfere with the present use of adjacent property. There have been no complaints from the neighbors. The environmental suitability of the present location of the solid waste management site is not known.

Under these facts Respondent contends in its brief filed May 20, 1977 that it is within the exemption of Section 21(e) of the Act. This section of the Act provides that permits are necessary unless the refuse is generated by the operator's own activity. The Board has dealt with this issue previously in EPA v. City of Pontiac, PCB 74-396, 180 PCB 303 (August 7, 1975) and People of the State of Illinois v. Commonwealth Edison Company, PCB 75-368, 24 PCB 197 (November 10, 1976) among others.

Respondent's argument in this case is substantially the same as that put forth in Commonwealth Edison, supra, that is that the Board's interpretation of the Act is contrary to the "clear and unambiguous" language of Section 21(e). The Board once again reaffirms its position in Pontiac and Commonwealth Edison that 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. In Commonwealth Edison the Board stated:

[T]he Pontiac opinion was before the Legislature when the amendment to 21(e) was executed. If indeed the Legislature did find the Board's interpretation incorrect, it would have been a simple matter to give us direction in the amendment. Instead the Legislature went beyond Pontiac and stated that even small amounts of refuse could not meet the exception should they be of a hazardous nature, a commonly accepted designation for particularly dangerous pollutants. Id at 201.

Nothing has been presented to convince the Board to change its interpretation of Section 21(e).

Based on the stipulated facts the Board finds Respondent in violation of Rule 202(b)(1) of the Regulations and Section 21(e) of the Act. Prior to its final determination the Board must consider the factors of Section 33(c) of the Act. The injury in this case is largely unknown because of a lack of environmental assessment of the site; however, there is always injury to the integrity of the permit system when waste management sites are run with disregard for the environment and the law. The parties have stipulated the site does have social and economic value; the existence of a viable business is certainly a positive value. The suitability of the site has not been determined because of the failure to present an adequate permit application (Stip. #9). However, the Board notes that the permit application indicates that the bottom of the pit is sand and the water level is one foot below (Ex. C at 5). The site is also in Kickapoo Creek Valley and the entire valley has a sand bottom (Ex. C at 5). These attributes indicate that the site would not be suitable for a waste management site. The record provides no specific facts relating to technical practicability and economic reasonableness. Absent presentation of adverse factors the Board must assume that this is not a contested issue.

Respondent did ignore repeated communications from the Agency advising Respondent that its operations were contrary to law (Ex. E - M). Waste materials of unknown constituents were placed in a site in which the environmental suitability is unknown. Respondent has shown a lack of responsibility at society's risk. The permit system is designed to protect against unknown risks. Respondent's failure to meet environmental safety requirements may have given it a competitive advantage upon those who have complied with the permit system. To protect the environment through the Act the Board finds that a penalty of \$1500 will be sufficient.

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. R. E. Joos Excavating Company is found to be in violation of Rule 202(b)(1) of the Solid Waste Regulations and Section 21(e) of the Environmental Protection Act.
2. Respondent shall cease and desist all further violations of the Regulations or the Act.
3. Respondent shall pay a penalty of \$1500 within 35 days of this Order. Payment shall be by certified check or money order payable to:

State of Illinois  
Fiscal Services Division  
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 7th day of July, 1977 by a vote of 5-0.

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