

ILLINOIS POLLUTION CONTROL BOARD
March 25, 1976

ENVIRONMENTAL PROTECTION AGENCY,)
)
) Complainant,)
)
) v.) PCB 75-405
)
JAMES BOYLES,)
) Respondent.)

Mr. Anthony B. Cameron, Assistant Attorney General, appeared on behalf of complainant.
Mr. James Boyles appeared pro se.

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

This case comes before the Board upon a complaint filed by the Environmental Protection Agency (Agency) on October 17, 1975. The Agency alleged that James Boyles (Respondent) owns and operates a refuse disposal site in violation of Sections 21(b) and 21(e) of the Environmental Protection Act, Ill. Rev. Stat. Ch. 111 1/2 §1021 (1973) and the Pollution Control Board's Solid Waste Regulations, Chapter 7, Rule 202(b)(1).

At the hearing a Stipulation and Proposal for Settlement was introduced. There was no testimony or citizen comment of any kind.

The background facts of the agreement are as follows. Respondent operates a refuse disposal site located near Nauvoo, Illinois, in the Northwest Quarter of Section 29 of Township 7 North, Range 8 West of the Fourth Principal Meridian in Hancock County, Illinois. The site was first operated in 1962 under a previous owner. In September 1973 it was purchased by Respondent. An application for a developmental permit was received by the Agency on April 26, 1974. The permit was denied for lack of information. Additional information was supplied and permit No. 1974-69-DE was granted in August 1974 to allow Respondent to develop his site.

The site was in poor condition at the time of purchase. Much of the work necessary under the permit conditions had been done when Respondent began being troubled by a physical

problem which made it impossible for him to operate the landfill equipment. Respondent underwent back surgery in November, 1974. By April, 1975 he was able to operate the equipment but only for 15 minute periods. During this time Respondent's wife, brother and son operated the equipment as best they could. Some problems arose and little development occurred. The Agency complaint was filed on October 17, 1975. On or about this same date settlement discussions were begun. In November Respondent requested inspection to determine whether the site was eligible for an operating permit. The site was found to be satisfactory and an operating permit issued November 21, 1975.

The site is open only on Saturdays and accepts less than 100 cubic yards of refuse per week. Net taxable income from the operation was very low in 1974. Gross income for the site in 1975 declined by more than one fourth. Total monthly expenditures exceed the gross monthly receipts. Respondent was laid off his job during his disability and now contracts for custom bulldozer work when possible on weekdays. The Agency verified Respondent's financial position by reviewing his 1973 and 1974 tax returns and his financial records for 1975.

The stipulated facts are the Respondent did cause or allow the operation of his refuse disposal site without an operating permit and that this constitutes violations of Rule 202(b)(1) of the Solid Waste Regulations and Section 21(e) of the Act. Respondent did have a development permit and he did obtain an operating permit on November 21, 1975. It was also stipulated that there is no alternate solid waste management site with an operating permit in Illinois within a 40-mile radius of Respondent's site.

Since Respondent has obtained an operating permit and is in compliance and that his previous failure to get an operating permit was at least partially due to his physical injury a penalty would not be an aid to enforcement. Also Respondent's financial condition mitigates against imposition of a penalty.

The Board finds that Respondent Boyles was in violation of the Solid Waste Rules and Regulations 202(b)(1) and Section 21(e) of the Environmental Protection Act. The Board also finds the stipulated agreement acceptable. It is agreed that with the Respondent's physical condition, his prompt compliance when able and his financial dilemma mitigates against a penalty.

The allegation of violation of Section 21(b) of the Act is dismissed for lack of prosecution. See E.P.A. v. E. & E. Hauling, Inc., PCB 74-473 (1975).

This constitutes the findings of fact and conclusions of law of the Pollution Control Board.

ORDER

It is the order of the Pollution Control Board that:

1. Respondent James Boyles by operating a solid waste management site without an operating permit was in violation of Rule 202(b)(1) of the Board's Solid Waste Rules and Regulations and of Section 21(e) of the Environmental Protection Act.
2. The portion of the Complaint alleging violations of 21(b) of the Act is dismissed.

Mr. Jacob Dumelle concurred.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted the 25th day of March, 1976 by a vote of 5-0.


Christan L. Moffett, Clerk
Illinois Pollution Control Board