

ILLINOIS POLLUTION CONTROL BOARD
February 11, 1976

ENVIRONMENTAL PROTECTION AGENCY,)
)
 Complainant,)
)
 v.) PCB 75-360
)
 VILLAGE OF BISHOP HILL, an)
 Illinois municipal corporation,)
 VERNIE V. and BLANCHE WEXELL,)
 and D. EVERETT and VERLA I. WEXELL,)
)
 Respondents.)

Ms. Mary C. Schlott, Assistant Attorney General, Attorney for
Complainant
Mr. Reynolds M. Everett, Jr., appeared on behalf of Respondents

OPINION AND ORDER OF THE BOARD (by Mr. Young):

This case arises out of an Amended Complaint filed with the Board on October 3, 1975, alleging that the Village of Bishop Hill, Vernie V. and Blanche Wexell, and D. Everett and Verla I. Wexell, have caused or allowed the operation of a solid waste management site in Henry County from July 27, 1974 to September 11, 1975, in violation of the operating permit requirement of Rule 202(b)(1) of the Board's Solid Waste Regulations (Regulations) and in further violation of Sections 21(e) and 21(b) of the Environmental Protection Act (Act).

Hearing was held on December 8, 1975, at which time a Stipulation and Proposal for Settlement (Stipulation) was entered into the record; no additional evidence was adduced at the hearing.

The Stipulation provided that the Village operates a refuse disposal site for its 190 citizens on a leased 2.8 acre parcel of land. Legal title to the site is held by Respondents Vernie V. and Blanche Wexell while the equitable owners are Respondents D. Everett and Verla I. Wexell (hereinafter "Contract Buyers") who signed a real estate installment contract on March 16, 1968, to purchase the aforesaid parcel. Under the terms of the lease executed in 1968 with Vernie V. and Blanche Wexell, the Village agreed to "keep said premises in a clean and healthy condition, in accordance with the ordinances of the Village, and the directions of the Board of Health." The lease agreement gave lessors the

right to inspect the dump site and to terminate the lease if all conditions were not performed. The Contract Buyers' right to possession is subject to the lease terms and since 1968 the Village has made its annual lease payments to the Contract Buyers.

The Agency mailed letters to the Village and Vernie Wexell describing certain operational deficiencies and pointing out the requirement that the solid waste site have an operating permit on May 24, 1974; July 1, 1974; August 19, 1974; October 17, 1974; December 9, 1974; and July 29, 1975. Agency personnel made field inspections and took pictures of conditions at the site on July 31, 1974; September 19, 1974; October 23, 1974; November 19, 1974; February 5, 1975; and June 26, 1975. On September 11, 1975, the Agency filed a Complaint charging the various violations by Vernie Wexell and the Village. On October 3, 1975, the Agency filed an Amended Complaint adding Blanche Wexell, joint tenant with Vernie V. Wexell as legal owners of the property in question, and D. Everett and Verla I. Wexell as the equitable owners.

The parties stipulated that the Village, prior to September 1, 1975, had never applied for nor received an operating permit for its solid waste management site. The stipulated facts state that the Contract Buyers are the "owners" of the site and that they knew or should have known of conditions existing at the site, although they were never notified by the Agency of any operational deficiencies at the site. The parties further agree that the exhibits (Agency reports and photographs) are a true and accurate representation of conditions at the site.

The Stipulation provides that the Village shall pay \$100.00 as penalty for the violations found to exist by the Board. It provides that Respondents D. Everett and Verla I. Wexell, the Contract Buyers, shall pay \$100.00 as a penalty for the violations found to exist by the Board. The Stipulation further provides that the future operation of the site shall be in accordance with various Agency conditions.

On the basis of the above facts and the Stipulation, which constitutes the entire record in this case, we find that Respondent Village and Respondents D. Everett and Verla I. Wexell did cause or allow the operation of a refuse disposal site in violation of the Act and Regulations from July 27, 1974 until September 11, 1975. We further find that the stipulated settlements of \$100.00 constitute reasonable penalties for these violations.

The Complaint as to Respondents Vernie V. and Blanche Wexell shall be dismissed. That portion of the Complaint alleging a violation of Section 21(e) of the Act by Respondents D. Everett and Verla I. Wexell shall be dismissed. That portion of the Complaint alleging violation of Section 21(b) must be dismissed.

Section 21(b) reads:

(No person shall) Cause or allow the open dumping of any other refuse in violation of regulations adopted by the Board.
[Emphasis added.]

Thus, an indispensable element of a charge alleging violation of Section 21(b) is the element setting forth the specific regulation allegedly violated. This regulation must relate to the manner or method in which the disposal site is operated. Since no regulatory violations were alleged in the charge excepting the permit violation, the Complaint is therefore defective as it concerns the alleged Section 21(b) violation. As was held in E & E Hauling, PCB 74-473, 16 PCB 215 (1975), a Section 21(b) open dumping charge is not properly based on an operating permit violation.

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

ORDER

IT IS THE ORDER OF THE BOARD that:

1. Respondent, Village of Bishop Hill, is found to have operated a solid waste management site in violation of Rule 202 (b)(1) of the Board's Solid Waste Regulations and Section 21(e) of the Act and shall pay a penalty of \$100.00 for such violations. Respondents D. Everett and Verla I. Wexell are found to have allowed the operation of a solid waste management site in violation of Rule 202(b)(1) of the Board's Solid Waste Regulations and shall pay a penalty of \$100.00 for such violations. Penalty payment by certified check or money order payable to the State of Illinois shall be made within 35 days of this Order to: Fiscal Services Division, Illinois Environmental Protection Agency, 2200 Churchill Road, Springfield, Illinois, 62706.
2. Respondent, Village of Bishop Hill, shall apply for an operating permit for its solid waste disposal site within 30 days of the date of this Order.
3. Respondent, Village of Bishop Hill, shall cease and desist from operating its refuse disposal site within 120 days of the date of this Order unless the requisite permit is issued by the Agency or a variance is granted by the Board.
4. Respondent, Village of Bishop Hill, shall cease and desist from open burning on its solid waste disposal site unless it has a permit issued by the Agency or a variance granted by the Board.

5. Respondent, Village of Bishop Hill, shall provide daily cover for all putrescible waste deposited at its solid waste site unless said waste is deposited with Agency approval, in an odor-proof, vector-proof closed container of adequate size between dates of covering.

IT IS THE FURTHER ORDER OF THE BOARD that:

1. That portion of the Complaint as to Respondents, Vernie V. and Blanche Wexell, is dismissed with prejudice.

2. That portion of the Complaint alleging a violation of Section 21(e) of the Act by Respondents, D. Everett and Verla I. Wexell, is dismissed.

3. That portion of the Complaint alleging a violation of Section 21(b) of the Act is dismissed.

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 February, 1976 by a vote of 4-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board