

ILLINOIS POLLUTION CONTROL BOARD  
October 14, 1976

ENVIRONMENTAL PROTECTION AGENCY, )  
)  
Complainant, )  
)  
v. ) PCB 76-34  
)  
CITY OF MOUND CITY, a )  
Municipal Corporation, )  
)  
Respondent. )

Mr. Richard W. Cosby, Assistant Attorney General, Attorney  
for Complainant  
Mr. Warner Wall, Attorney for Respondent

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

This matter comes before the Board on a Complaint filed by the Environmental Protection Agency (Agency) on February 6, 1976, alleging that Respondent, City of Mound City (Mound City) violated certain sections of the Environmental Protection Act (Act) and certain rules of the Illinois Pollution Control Board Rules and Regulations, Chapter 7: Solid Waste (Chapter 7) as follows:

Count I: Violation of Rule 200(b)(1) of Chapter 7 and Section 21(b) and 21(c) of the Act - operation of a solid waste management site from November 19, 1975 until the date of filing without an operating permit issued by the Agency;

Count II: Violation of Rule 305(c) of Chapter 7 and Section 21(b) of the Act - failure to place a compacted layer of not less than two feet of cover over the entire surface of the final lifts of the landfill within 60 days following placement of refuse in said final lifts; and

Violation of Rule 311 of Chapter 7 and Section 21(b) of the Act - causing or allowing open burning at a sanitary landfill site not in accordance with the provisions of Chapter 2, Part V, Open Burning, Illinois Pollution Control Board Rules and Regulations; and

Violation of Rule 314(c) of Chapter 7 and Section 21(b) of the Act - causing or allowing the operation of a sanitary landfill which did not provide fencing, gates or other measures to control access to the site.

On February 10, 1976 the Agency filed with the Board a Request for Admission of Fact pursuant to Rule 314(a) of the Board's Procedural Rules and served a copy of said Request upon the Respondent herein on February 12, 1976. Rule 314(c) of the Board's Procedural Rules, in pertinent parts provides:

"Each of the matters of fact ... of which admission is requested is admitted unless, within 20 days after service thereof, the party to whom the request is directed serves upon the party requesting the admission either (1) a sworn statement denying specifically the matters of which admission is requested or setting forth in detail the reasons why he cannot truthfully admit or deny those matters or (2) written objections on the ground that some or all of the requested admissions are privileged or irrelevant or that the request is otherwise improper in whole or in part."

Mound City did not file a sworn denial or written objections to the Request for Admission of Fact in this case and the matters of fact of which admission was requested are admitted by operation of Procedural Rule 314(c). Mound City prepared an Answer to the Complaint which was presented to the Hearing Officer at the hearing of this matter on June 17, 1976 in Mound City, Illinois. The Answer was filed with the Board on June 21, 1976 by the Hearing Officer.

The site in question is located in the Northwest Quarter of Section 36 of Township 16 South, Range 1 West, in Pulaski County, Illinois.

In the Answer filed by Mound City Respondent admits the operation of a solid waste management site without an operating permit (Answer, para. 6 & 7) and failure to apply final cover (Answer, para. 7).

The record indicates that the Illinois Environmental Protection Agency sent a series of 19 letters to Mound City from August 24, 1973 through December 8, 1975 notifying Mound City of violations of the Environmental Protection Act and Chapter 7 of the Illinois Pollution Control Board Rules and Regulations (Request for Admission, para. 7).

Kenneth G. Mensing, an inspector for the Division of Land Pollution Control of the Agency, testified concerning the existing condition of the site (R. p8-9) and the work required

to bring the site into compliance with the Solid Waste Regulations (R. p9-10). He also estimated that the cost to cover would be somewhere in the range of \$1000.00 or less (R. p12).

Frederick M. Winkler, the Mayor of Mound City, was called as an adverse witness and testified that the site has been mismanaged for 30 years (R. p19); that there had been open burning at the site prior to the time that the landfill site was closed (R. p21-22); that everybody in this world has access to the site (R. p27); and that a contract had been let to provide final cover at a cost of under five hundred dollars but that due to mechanical problems the contractor had not started work (R. p29-30). Mayor Winkler gave a narrative statement on behalf of Mound City in which matters in mitigation were presented including plans for closing the site (R. p34); the origin of demolition materials deposited on the site (R. p35); and Mound City's attempts to prohibit use of the site (R. p36-37). On cross examination the Mayor testified that much demolition material resulting from the demolition of one hundred homes in Mound City was still on the sites where it was generated but some was taken to the landfill site at least up through '75 (R. p39-40). Other matters in mitigation concern the expenditure required to remove demolition material from tax delinquent properties in Mound City and the problems caused by the inability to dispose of the material (R. p42; Answer para. 3) and the inability of Mound City to generate sufficient revenues (R. p28; Answer para. 3) to immediately dispose of the demolition wastes.

In determination of the appropriate remedy for the violations set forth herein, the Board, after a consideration of the factors included in Section 33 of the Act and the facts of this case, has concluded that it is technically practicable and economically reasonable for the Respondent to comply with the requirements of the Act and Chapter 7 of our Regulations. However suitable the site might be as a sanitary landfill, without proper site preparation and operation guaranteed by the appropriate Agency permits, the potential for environmental damage is great. In this instance Respondent's Mayor admitted the site to be "an open sore" (R. p19) and testified that the site was an old borrow area where sand had been removed and the resulting holes stood full of water when the river was at high stage (R. p23) and that the Mound City area has a high ground water problem (R. p41). The record also indicates that a suitable disposal site is available within 7 or less miles (R. p31, 41).

The fact that Mound City has received numerous warnings and visits from the Agency over a considerable period within coming into compliance aggravates the violation.

Some mitigation is justified because Respondent is a municipality and the Board is aware of the strained financial position of most municipalities. Certainly Mound City is no exception;

however, such condition is not a justification for long continuing violations of the Act and the Rules and Regulations of the Board. Under the circumstances the Board will assess a penalty of \$400.00 and will further require Mound City to properly close the site or obtain a permit from the Agency if it chooses to continue depositing demolition materials at the site. Additionally, Respondent shall cease and desist from open burning in violation of Rule 311 of Chapter 7.

The Complaint, in Count I, paragraph 7, alleges a violation of Sections 21(b) and 21(e) of the Act arising from the violation of Rule 202(b)(1). The portion of that count alleging violation of Section 21(b) must be dismissed following our decision in E & E Hauling, PCB 74-473, 16 PCB 215 (1975).

This Opinion constitutes the Board's finding of fact and conclusions of law in this matter.

#### ORDER

1. Respondent, City of Mound City, is found to have operated its waste disposal site in violation of Rule 202(b)(1); Rule 305(c); Rule 311; and Rule 314(c), all of Chapter 7 of the Rules and Regulations of the Board; and, in violation of Sections 21(b) and 21(e) of the Act, as alleged and shall pay a penalty of \$400.00 for such violations. Penalty payment by certified check or money order payable to the State of Illinois shall be made within 35 days of the date of this Order to: Fiscal Services Division, Illinois Environmental Protection Agency, 2200 Churchill Road, Springfield, Illinois, 62706.

2. Respondent, City of Mound City, shall cease and desist from the violations of the Act and Chapter 7 of the Rules and Regulations of the Board found herein.

3. Respondent, City of Mound City, shall apply final cover within 120 days of the adoption of this Order or apply for an operating permit from the Agency within 30 days of this Order if Respondent intends to operate the site. But no operation of the site will be allowed unless and until an operating permit is issued by the Agency.

4. The charge of Count I alleging violation of Section 21(b) of the Act is dismissed.

IT IS SO ORDERED.

Mr. Jacob D. Dumelle concurs.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 14<sup>th</sup> day of October, 1976 by a vote of 5-0.

  
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Christan L. Moffett, Clerk  
Illinois Pollution Control Board