

ILLINOIS POLLUTION CONTROL BOARD
February 11, 1976

ENVIRONMENTAL PROTECTION AGENCY,)
)
 Complainant,)
)
 v.) PCB 75-261
)
VERNON POPKINS and P. K. MCGINNIS,)
)
 Respondents.)

Ms. Joan C. Wing, Assistant Attorney General, Attorney for
Complainant
Mr. William B. Petty, Main & Rapp, Attorney for Respondents

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

On July 3, 1975, the Environmental Protection Agency (Agency) filed a Complaint against Respondents alleging development and operation of a solid waste management site without the necessary permit in violation of Rule 202(a) of the Solid Waste Regulations, and Sections 21(b) and 21(e) of the Environmental Protection Act. The Complaint alleged such violation from October 9, 1974 until July 3, 1975. A hearing was held on October 3, 1975, in Mt. Carroll, Illinois.

Lawrence Marques, a landfill inspector for the EPA's Division of Land Pollution Control, testified that he visited the site which is the subject of this case on October 9, 1974. (R. 7). Marques observed refuse disposed on the ground and not properly covered and spoke with Mr. Popkins informing him of the violations on the site and the need for an operating permit. (R. 8). Marques left a copy of the inspection report with Popkins and also prepared a followup letter for Popkins and McGinnis again pointing out conditions found at the site. (R. 14).

Robert Rocha testified that he was a supervisor for the EPA's Division of Solid Waste Disposal, and visited the site on November 8, 1974, and again on January 8, 1975, finding the same general conditions as noted previously. A followup letter was also prepared and mailed after the site inspection of January 8, 1975. (R. 35). Rocha also spoke with the Respondents by phone informing them of the necessity for a permit. The site was again inspected by Rocha on February 3, 1975 with a followup letter again mailed to the Respondents.

Mr. Popkins was called as an adverse witness by Complainant and admitted he had operated the site since June of 1974, was aware of the necessity for an operating permit, but had not filed a permit application because he could not financially afford it. (R. 67, 68). He further admitted that the site was not closed until some time around July 4, 1975. (R. 72).

Mr. McGinnis was also called as an adverse witness and admitted to being the owner of the site in question. (R. 76). McGinnis admitted he knew of the necessity for an operating permit but had not followed through to make sure the application was submitted to the Agency. (R. 78, 79).

The evidence is uncontroverted that the site was in operation as a landfill without a permit from October 9, 1974 until July 3, 1975. The Board finds that Respondents, Popkins and McGinnis, have violated Rule 202(a) of the Solid Waste Rules and Regulations from October 9, 1974 until July 3, 1975, as charged in the Complaint. In addition, the Board finds that Respondent Popkins has violated Section 21(e) of the Act. No violation of Section 21(b) of the Act has been shown here; that section of the Complaint alleging open dumping must be dismissed.

The only question that remains is the amount of the penalty. The presentation of Respondents' case in chief related primarily to a showing of mitigating circumstances. Mr. McGinnis stated the Mayor of Thomson and Mr. Popkins sought his permission to use the land because the Village did not have any other place to dispose of the refuse. (R. 76). McGinnis had never previously allowed his land to be used as a landfill and was assured by Popkins and the Mayor of Thomson that the necessary permit would be obtained. Popkins then testified that only one approved landfill existed in Carroll County, but it was a city landfill at Savanna, and he was not permitted to enter it. Popkins also testified that the permit application papers were turned over to the Village attorney who delayed filling them out. (R. 84).

In aggravation of damages, it is noted that Respondents received repeated warnings and visits from the Agency but nevertheless persisted in remaining in violation of the law. This uncooperative conduct continued for a period of over eight months notwithstanding that he knew the possible consequences. Popkins admitted he prolonged closing the site for as long as possible in order to gain more time for the opening of an approved county landfill. The Board takes notice of the fact that the landfill site was not closed until after this enforcement action was filed.

The technical practicability and economic reasonableness of obtaining the required permit for the subject site are not an issue in this case. Such a conclusion is supported by the fact that all surrounding counties have one or more approved solid waste management sites. The Board notes that waste management sites have con-

siderable social and economic value, but that value may be considerably decreased, or even nullified, unless care is taken to insure that the site chosen is appropriate. The potential for injury to the environment from such unregulated sites is enormous and for this reason the Board notes the necessity of the permit system.

In the interests of maintaining an effective permit system and as an aid in the enforcement of the Act, a penalty is required in this case. The Board finds that a civil penalty of \$50.00 for Respondent McGinnis and a civil penalty of \$500.00 for Respondent Popkins will be appropriate.

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

ORDER

IT IS THE ORDER of the Pollution Control Board that:

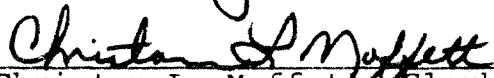
1. Respondent, P. K. McGinnis, has allowed the operation of a solid waste management site in Carroll County, Illinois, in violation of the operating permit requirement of Rule 202(a) of the Board's Solid Waste Rules and Regulations, during the period October 9, 1974 to July 3, 1975.

2. Respondent, Vernon Popkins, has caused the operation of a solid waste management site in Carroll County, Illinois, in violation of Rule 202(a) of the Board's Solid Waste Rules and Regulations and Section 21(e) of the Environmental Protection Act during the period October 9, 1974 to July 3, 1975.

3. For the above described violations, Respondent Popkins shall pay as a penalty the amount of \$500.00, and Respondent McGinnis shall pay as a penalty the amount of \$50.00. 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.

4. That portion of the Complaint alleging 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