

ILLINOIS POLLUTION CONTROL BOARD
April 22, 1976

ENVIRONMENTAL PROTECTION AGENCY,)
)
 Complainant,)
)
 v.) PCB 75-404
)
 CITY OF MACOMB, a Municipal)
 Corporation,)
)
 Respondent.)

Mr. Richard W. Cosby, Assistant Attorney General appeared for Complainant.
Mr. Bruce J. Biagini and Mr. Larry Kwacala, appeared for Respondent.

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 complaint alleges that the City of Macomb owns and operates a refuse disposal site in Section 30 of Township 6 North, Range 2 West in McDonough County, Illinois and that this site has been in operation since July 27, 1974 to the date of filing without an operating permit issued by the Agency, in violation of Rule 202(b)(1) of the Solid Waste Regulations and Sections 21(b) and 21(e) of the Act. Count II alleges that final cover has not been properly placed and is thus a violation of Rule 305(c) and Section 21(b) of the Act. Count III alleges that the La Moine River bounds the site on the south and constitutes waters of the State of Illinois, and that on twelve different dates from and including July 11, 1973 to September 25, 1975, Respondent caused or allowed leachate to pond on the site or to drain from the site toward the backwater of the La Moine River which would be in violation of Rules 406 and 408 of the Board's Rules and Regulations, Ch. 3, Water Pollution, if deposited or discharged directly into the waters of the State. This same drainage is also alleged as a violation of Rule 313 of the Solid Waste Regulations and hence a violation of 21(b) of the Act, Ill. Rev. Stat., Ch. 111 1/2 1021(b)(1973).

A hearing was held in Macomb, Illinois on January 29, 1976. The facts presented are that the City of Macomb had run a landfill of approximately eighty acres (R.150) at the site in question. In 1970 the site was covered (R.100) and for all practical purposes abandoned. The cover has eroded and leachate flows have occurred on the site. The site is located just north of the East Fork of the La Moine River which is a tributary of the Illinois River and drainage from the area enters this fork. The City has made efforts to cover the areas where leaching occurs and has added to the cover on several occasions (R.75,78,80).

The City of Macomb was aware of leachate at the landfill site as early as July 1972 (R.75). The City hauled dirt into the landfill in an attempt at increasing the cover (R.75). Also in 1972 an attempt was made to lime and seed the landfill (R.78). The City attempted, at the recommendation of the Agency, to use a berm to divert water into a channel so water would not permeate the landfill (R.79,80). Lime sludge has also been applied to the landfill in attempts to cover (R.109,110). The record does not state on whose authority this was done. There is testimony from an Agency witness, Mr. William C. Child, Regional Supervisor from the Central Region, that lime sludge would "help neutralize some of the constituents within the leachate . . ." and that it would also help "promote vegetative growth" and help "get the evapotranspiration rate up for the landfill to get the water balance correct" (R.52). There is no testimony stating there were any harmful effects. At the hearing it was suggested that the lime sludge was "dumped" because of the convenience of the site. Examination of motive and the apparent good faith efforts to prevent the leaching leads the Board to reject the theory that the City was dumping its sludge for convenience. Two feet of final cover was placed in 1970 (R.100). In Agency inspections in 1973 and 1974, cover was found adequate but eroding (EPA Exs. #4,10,12,15). The nature of the site is such that it erodes easily and is an unstable slope. The City of Macomb has only attempted to repair and maintain the cover. There is no evidence of bad faith on the part of the City. On the contrary correspondence shows that the City has responded quickly and offered only cooperation with the Agency (EPA Ex. 24). That the City has been running a landfill has not been shown as admitted by the Agency's own counsel in closing (R.148). The Board therefore dismisses the allegations of Count I.

Between June 9, 1975 and August 21, 1975 demolition waste was dumped on the site by persons unknown (R.40,41). This waste was evidently cleaned up by the City Street Department (R.109) and authorization for a fence to limit access to the site has also been given by the Mayor (R.81). The dumping of demolition waste without proper cover in accordance with Rule 305 of the Solid Waste Regulations is a violation of Section 21(b) of the Act. The Board does find the cleanup and apparent lack of permanent environmental damage as mitigating factors. With respect to the remainder of the landfill area, the Board finds that two feet of Final cover had been placed in accordance with Rule 305(c) of the Solid Waste Regulations and that further covering is attributable to maintenance. The Board therefore finds the Respondent in violation of Rule 305(c) and Section 21(b) of the Act with respect to the demolition waste.

Count III alleges violations of Rules 406 and 408 of the Chapter 3, Water Pollution Regulations and of Rule 313 of the Solid Waste Regulations and Section 21(b) of the Act. The Agency alleges that leachate was found either in ponds or draining into the backwater of the La Moine River on July 11, 1973, August 14, 1973, October 1, 1973, November 6, 1973, November 14, 1973, January 30, 1974, July 18, 1974, October 9, 1974, February 19, 1975, June 9, 1975, August 21, 1975 and September 25, 1975. This was substantiated by witnesses at the hearing (R.11,14,16,19,25,35,40,52) and by their reports (EPA Ex. 1-21). Actual samples of leachate were taken and tested on November 14, 1973. Of the four samples taken, two samples, 1 and 2, were in violation of the effluent standards for ammonia nitrogen in Rule 406 of Chapter 3, Water Pollution Regulations. All four samples exceeded the numerical limits of the effluent regulation, Rule 408, Chapter 3, Water Pollution Regulations. Sample number 4 was running directly into the La Moine River (R.17). With certain assumptions, these samples could, as alleged, be taken to prove violations of Rules 406 and 408 of the Water pollution Regulations. However, Rule 104 of these regulations centers its definition of "effluent" around "waste water." The record does not indicate liquid wastes were deposited at this site; therefore, it is questionable that the standards for effluents should be applied to these seepages. In addition, if the interpretation is that the seepage is an effluent, the recorded flow rate and concentration (EPA Ex. 9) of 1 to 2 gal/min. with a concentration of 0.3 mg/l ammonia N of the sample directly discharging into the La Moine River would fail to prove a violation of Rule 406. No direct evidence was given to permit an estimation of ammonia nitrogen entering the river by subsurface flow. We must dismiss the alleged violation of Rule 406.

In its definition of effluent, Rule 104 specifically mentions runoff from land used for disposition of sludge. Since the Respondent did apply lime sludge it is possible to find a violation of Rule 408. However, in the absence of clear proof that the seepage is derived from runoff from the sludge and that the seepage is in fact an effluent, we also dismiss the alleged violation of Rule 408. The Board has no difficulty in finding a violation of Rule 313 of the Solid Waste Regulations which provides:

No person shall cause or allow operation of a sanitary landfill so as to cause or threaten or allow the discharge of any contaminants into the environment in any State so as to cause or tend to cause water pollution in Illinois, either alone or in combination with matter from other sources, or so as to violate regulations or standards adopted by the Pollution Control Board under the Act.

The Board has previously stated that allegations of violations of Section 21(b) must set forth a specific regulation as violated. This regulation must relate to the manner or method in which the disposal site is operated. A violation of Rule 313 in this case is not so closely related to the manner or method of operation as to constitute a violation of Section 21(b) of the Act as alleged in Count III. Therefore, the allegation of violation of Section 21(b) of the Act in Count III is dismissed.

In this case the main concern of the Agency and the City of Macomb is that this problem be resolved. Both the Agency and the City of Macomb had qualified people, Mr. William C. Child and Mr. Raymond L. Childs, respectively, testify as to the nature of the problem and possible solutions. For the most part these two witnesses agreed on the analysis of the situation. Mr. William Child of the Agency testified that the refuse at this site sits on rather impermeable clay and that water filtering through the cover and the refuse would then run down the steep slope of the clay to the toe of the landfill to the La Moine River bottom (R.53). He suggested two courses of action to alleviate the situation. First, it is necessary to stop the infiltration of water falling on the surface of the landfill and secondly, to make a clay barrier or dike at the bottom of the landfill to hold the water already in the landfill. Also the clay should help purify the leachate (R.53,54). Mr. Child on the assumption the City could get dirt from other municipal projects estimated that the work could be done for a maximum of \$50,000. Mr. Raymond L. Childs agreed with the Agency's suggestions (R.129) but noted that at this point in time there is no sure way to control the leachate (R.127).

The City of Macomb has already put considerable time and money into correcting this situation. In 1972 the City paid \$7,360 to Leroy Brown and Sons for moving dirt and bulldozing at the site in question (R.83). In 1974 dirt and clay were hauled to put on the leachate eruptions (R.83). This project included three to four weeks of continuous work involving hauling with two trucks. The City has also done other interim covering (R.121). Macomb is a city of 20,000 people. It is without an industrial tax base. The City has a \$220 million assessed valuation which is tax free in the form of Western Illinois University (R.157). The City is not a home rule unit (R.157) and the garbage levy is about \$100,000, which is about two mills, the maximum by Illinois State Statute (R.91). The City is presently confronted with subsidizing the garbage levy out of the Corporate-General account (R.97).

The Board agrees that the important issue here is the resolution of the problem leachate. The allegation of violation of Rule 202(b)(1) of the Solid Waste Regulations, the allegation of violations of Rules 406 and 408 of Chapter 3: Water Pollution Regulations and the allegation of violation of Section 21(e) of the Act are dismissed. The Board does find the City of Macomb is in violation of Rules 305(c) and 313 of the Solid Waste Regulations and Section 21(b) of the Act. Because of the City's efforts to alleviate the problem, its cooperative response to the Agency suggestions, and the relatively small size of the city, the Board finds that no penalty is warranted. However, the Board does require that the City of Macomb submit a plan to the Agency within 90 days to restore the site in accordance with Regulations. The Agency shall continue to monitor the site periodically. The City will cause corrective measures in the event of further seepage so as to prevent pollution. Other than in accordance with a compliance plan the City shall cease from dumping any refuse on the site and use its best efforts to prevent others from so doing.

This constitutes the Board's findings of fact and conclusions of law.

ORDER

It is the Order of the Pollution Control Board that:

1. The alleged violation of Rule 202(b)(1) of the Solid Waste Regulations and the allegation of violation of Section 21(e) of the Act are dismissed.


2. The alleged violations of Rules 406 and 408 of the Chapter 3: Water Pollution Regulations are dismissed.

3. The City of Macomb is in violation of Rules 305(c) and 313 of the Solid Waste Regulations and Section 21(b) of the Act.

4. The City of Macomb shall cease and desist any further use of the site in question except in accordance with regulations.

5. The City of Macomb will submit to the Environmental Protection Agency within ninety (90) days of this Order a plan acceptable to the Agency to restore the site in accordance with Regulations. The Agency shall continue to monitor the site periodically. The City will cause corrective measures in the event of further seepage so as to prevent pollution.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 22nd day of April, 1976 by a vote of 50.


Christan L. Moffett, Clerk
Illinois Pollution Control Board