

ILLINOIS POLLUTION CONTROL BOARD
January 6, 1977

ENVIRONMENTAL PROTECTION AGENCY,)
)
Complainant,)
)
v.) PCB 75-487
)
CITY OF MOUNT CARMEL,)
a municipal corporation,)
)
Respondent.)

DISSENTING OPINION (by Mr. Young):

I am unable to find a violation of the Act or our Regulations in this matter and would dismiss the Complaint.

In this case the activity complained of was undertaken to prevent further damage in the Rose Hill Cemetery from water erosion and there was no environmental damage alleged and no evidence was introduced indicating any environmental damage. The material used to control the erosion has no potential for pollution and I am unable to categorize it as refuse, even given the broad definition of the Act.

Rule 202(a) of Chapter 7 provides that no person shall cause or allow the use or operation of any solid waste management site for which a Development Permit is required under Rule 201 without an Operating Permit issued by the Agency. A Development Permit pursuant to Rule 201 was issued to the City on December 24, 1975, five days after the Complaint was filed, and inert material, brush and trees were placed in the erosion gully before the City obtained an Operating Permit.


I believe it is reasonable to conclude that no Development Permit was required in this instance, given the nature of the activity undertaken. The determination of whether or not a Solid Waste Management Site Development Permit is required is accomplished by a consideration of the nature and use of the site, both before and at the conclusion of the activity undertaken; the purpose for which the material is deposited; and the nature of the material employed. In the instant case, the nature and use of the site both before and after the activity are identical; the material was deposited

for restoration of water erosion damage and erosion control; the material used was inert material, brush and trees, all of which are commonly used for that purpose. The conclusion from this consideration is that the activity does not constitute a solid waste management site for which permits are required by Rule 201 and Rule 202(a) of our Regulations and not a refuse-collection or refuse disposal operation within the contemplation of Section 21(e) of the Act.

In the prevention and repair of water erosion damage, where putrescible or otherwise unsuitable material is employed which might cause or threaten air or water pollution, the environment is adequately protected by the prohibitions in Titles 2 and 3 of the Act and particularly through Sections 9(a), 9(c), 12(a) and 12(d) as applicable. For the Board to require permits for activities in control of soil erosion would seem clearly beyond the authority of Title 5 of the Act nor does the opinion of the Board on the adoption of Chapter 7 (8PCB695) supply the basis to support any such requirement.


James L. Young

I, Christian L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Dissenting Opinion was submitted on the 17 day of January, 1977.


Christian L. Moffett, Clerk
Illinois Pollution Control Board