

ILLINOIS POLLUTION CONTROL BOARD  
October 14, 1976

ENVIRONMENTAL PROTECTION AGENCY, )  
 )  
 Complainant, )  
 )  
 v. ) PCB 76-23  
 )  
 TOM OZBURN, )  
 )  
 Respondent. )

Mr. Richard W. Cosby, Assistant Attorney General, Attorney  
for Complainant

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

This matter comes before the Board on a Complaint filed January 21, 1976 by the Environmental Protection Agency charging that Respondent Tom Ozburn owned and operated from July 27, 1974 until January 21, 1976 a solid waste management site without the necessary operating permit in violation of Rule 202(b)(1) of Chapter 7: Solid Waste Regulations, and in further violation of Section 21(b) of the Act. Mr. Ozburn did not file any pleadings in this matter and did not appear at the hearings held in Sterling on April 30, 1976 and August 11, 1976.

On February 2, 1976, the Agency caused a Request for Admission of Fact to be served on Mr. Ozburn. Because Respondent failed to file an answer to that Request within 20 days of its receipt, all requests for admission contained therein are deemed admitted by operation of Board Procedural Rule 314(c). As a result of these admissions and the Agency testimony at the hearing, it is clear a violation has been proven.

Mr. Ozburn has owned and operated a solid waste management site located in Section 27, Township 22 North, Range 3 East in Whiteside County since July 27, 1974 until January 21, 1976 without the necessary operating permit.

Mr. Robert Wengrow, Inspector for the Agency's Division of Land Pollution Control, visited the site on August 27, 1975 and observed openly dumped demolition wastes (R. 8). No attempt

to cover the material had been made and the site was freely accessible to the public. Other Agency inspection reports indicate the site was operational through January 21, 1976 (Exh. 2, 5). Included in this exhibit are recent photographs of the site which when contrasted with photographs taken on November 19, 1975, (Ag. Exh. 1A) disclose there has been a marked improvement in conditions at the site.

On the basis of the foregoing, the Board finds that Respondent did violate Rule 202(b)(1) of the Regulations by operating his solid waste management site without an operating permit. The Board will dismiss that portion of the Complaint alleging violation of Section 21(b) of the Act; the Board has often held that a violation of the operating permit requirement constitutes a violation of Section 21(e), not 21(b). E & E Hauling, PCB 74-473, 16 PCB 215 (1975).

Because Respondent has defaulted in this matter, factors which the Board would ordinarily weigh in mitigation are absent from the record. On the basis of the facts contained in the record, however, the Board will order that Respondent cease and desist further violations of the Solid Waste Regulations and apply proper final cover in accordance with the Regulations. The Board will also assess a penalty of \$500.00 as an aid to the enforcement of the Act. An effective permit system is essential to reaching the State's environmental goals and the Board must assess a penalty in cases, such as this, when that system has been completely ignored.

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

#### ORDER

1. Respondent, Tom Ozburn, has owned and operated a solid waste management site without an operating permit in violation of Rule 202(b)(1) of Chapter 7: Solid Waste Rules and Regulations and shall pay a penalty of \$500.00 for this violation. 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 shall immediately cease and desist further violations of the Solid Waste Regulations and properly close the site in accordance with the Regulations within 90 days of the date of this Order.

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