

ILLINOIS POLLUTION CONTROL BOARD
May 20, 1976

ENVIRONMENTAL PROTECTION AGENCY,)
)
 Complainant,)
)
 v.) PCB 76-18
)
 CITY OF PERU, a municipal)
 corporation,)
)
 Respondent.)

Mr. Marvin Medintz and Miss Susan H. Shumway, Assistant Attorneys General, appeared on behalf of the Complainant. Mr. Charles Helmig appeared on behalf of the Respondent.

OPINION AND ORDER OF THE BOARD (by Dr. Satchell):

This case was brought before the Board upon a complaint filed January 21, 1976 by the Environmental Protection Agency (Agency) alleging that the City of Peru owns and operates a refuse disposal site located in Sections 20 and 21 of Township 33 North, Range 1 East in La Salle County, Illinois. Count I alleges that on January 21, 1975, February 26, 1975, May 2, 1975, July 22, 1975, August 28, 1975, December 5, 1975, December 11, 1975 and December 12, 1975 Respondent failed to place a compacted layer of at least six inches of suitable material on all the exposed refuse at the site in violation of Rule 305(a) of the Solid Waste Regulations (hereinafter Regulations) and Section 21(b) of the Environmental Protection Act. Count II alleges that the refuse site is on the flood plain of the Illinois River and that on January 31, 1975, December 5, 1975, December 11, 1975 and December 12, 1975 Respondent caused or allowed refuse to be dumped in standing water on the site in violation of Rule 313 of the Regulations and Section 21(b) of the Act. Count III alleges Respondent failed to collect all litter from the site by the end of the working day on February 26, 1975, December 5, 1975, December 11, 1975 and December 12, 1975 in violation of Rule 306 of the Regulations and Section 21(b) of the Act. Count IV alleges that Respondent on December 5, 1975 caused or allowed paint wastes to be dumped on the site without a permit issued by the Agency in violation of Rule 310(b) of the Regulations and Section 21(b) of the Act.

A hearing was held on this matter on March 12, 1976. At that time a stipulated agreement was presented with a written statement to be submitted later. At this hearing the Respondent had testimony from two witnesses presented in mitigation. The witnesses were Marvin Ecklund, city employee in charge of the site and Donald Baker, Mayor of Peru.

The stipulated agreement is as follows. Respondent owns and operates the refuse disposal site in question. Respondent admits that December 11, 1975 Respondent failed to place a compacted layer of at least six inches of suitable material on all exposed refuse of the landfill at the end of the day of operation in violation of Rule 305(a) of the Regulations and in violation of Section 21(b) of the Act. Respondent further admits that on December 5, 1975 Respondent caused or allowed paint wastes to be dumped on the site without a permit issued by the Agency, in violation of Rule 310(b) of the Regulations and of Section 21(b) of the Act.

The parties then stipulated to particular aspects of Exhibits 1 through 7 concerning accuracy and validity. Respondent agreed to a cease and desist order from further violations and to pay a penalty of \$750 within thirty-five days.

Mr. Ecklund, an employee who is in charge of the disposal site, testified to the fact that the deposit of paint found on the site on December 5, 1975 was not brought in with any knowledge on the part of the City (R.12,13). Sometimes the trucks are checked at the gate for what they contain but not all the trucks (R.14,20). Mr. Ecklund also stated that normally daily cover is applied at the end of the day (R.15). There was no cover applied December 11, 1975 because Respondent's end loader motor "had knocked a rod out" and had to be sent to the plant to be repaired (R.16). Mr. Ecklund attempted to cover using the compactor but the results were inadequate (R.16). The City has only one end loader and Mr. Ecklund knew of no others in the area (R.17). Mr. Ecklund stated that purchasing a new end loader would cost approximately \$50,000 (R.18).

Mr. Baker, the mayor, testified to the fact that he had discussed the stipulation with several members of the City Council and that they would approve the settlement (R.22,24). It was approved on April 12, 1976.

In summation it was pointed out that the City of Peru has had a good record in the past of properly running their site, but that the City had run into some problems when their old site was exhausted and it was necessary to move to adjacent land in the fall of 1975 (R.28,29). The City has complied to the request of the Agency to dump the refuse at the toe of the fill rather than the top and this has helped reduce the litter in the area (R.29).

The stipulation does fail to address all the allegations of the complaint. The City admits with Agency agreement the violation of no daily cover, Rule 305(a) of the Regulations on only one of the eight alleged days. The Count II allegations of Rule 313 and the Count III allegations of violations of Rule 306 are not mentioned at all in the settlement. The daily collection of litter, Rule 306 and the improvement of the situation was mentioned by the City in summation (R.29). Count IV, the allegation of causing or allowing the dumping of paint wastes, Rule 310(b) was disposed of completely by the admission of violation.

The Board prefers to have access to the knowledge that all the allegations of the complaint were dealt with, but absent prosecution by the Agency the Board must rely on the Agency's judgment in settling the case or reject the settlement. In this case the evidence presented shows the City of Peru has not intentionally violated the Act, and that in the past Respondent has had a good record. The Board also notes the City responded to the complaint with alacrity. Thus the Board does accept the stipulated agreement under Procedural Rule 333.

The Board finds that the City of Peru was in violation of Rule 305(a) of the Solid Waste Regulations and of Section 21(b) of the Act on December 11, 1975, and on December 5, 1975 the City was in violation of 310(b) of the Solid Waste Regulations and Section 21(b) of the Act. All other allegations of violations are dismissed for lack of prosecution. The Board assesses a penalty of \$750 to be paid within thirty-five (35) days of this order.

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

Mr. James Young concurs.

ORDER

It is the order of the Pollution Control Board that:

1. The City of Peru was in violation of Rule 305(a) of the Solid Waste Regulations and Section 21(b) of the Act on December 11, 1975. The City was in violation of Rule 310(b) of the Solid Waste Regulations and Section 21(b) of the Act on December 5, 1975.

2. The allegations of violation of Rule 305(a) of the Solid Waste Regulations of days other than December 11, 1975 and of violation of Rules 306 and 313 of the Solid Waste Regulations are dismissed.

3. The City of Peru shall cease the said violations and desist any violations in the future.

4. The City of Peru shall pay a penalty of \$750 within thirty-five days of this order. Payment shall be by certified check or money order payable to:

State of Illinois
Fiscal Services Division
Environmental Protection Agency
2200 Churchill Road
Springfield, Illinois 62706

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 20th day of May, 1976 by a vote of 5-0.


Christan L. Moffett, Clerk
Illinois Pollution Control Board