

ILLINOIS POLLUTION CONTROL BOARD
December 18, 1975

ENVIRONMENTAL PROTECTION AGENCY,)
)
 Complainant,)
)
 v.) PCB 74-485
)
 CITY OF FULTON,)
)
 Respondent.)

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

This matter comes before the Pollution Control Board (Board) as final settlement of a case originating in a Complaint filed by the Attorney General for the Environmental Protection Agency (Agency) on December 20, 1974. That Complaint alleged the operation of two sanitary landfills by Respondent City of Fulton (Fulton) without the necessary operating permits from the Agency, in violation of the Board's Solid Waste Regulations and the Environmental Protection Act (Act). PCB Regs., Ch. 7: Solid Waste; Ill. Rev. Stat., Ch. 111-1/2, §1001 et. seq.

For clarity, a summary of the preceding events is given at the start of the Opinion:

1. On December 20, 1974, the original Complaint in this matter was filed, alleging violation of Rule 202(b)(1) of our Solid Waste Regulations and §21(b) of the Act, at two solid waste management sites described as being in:

a. "Section 33, Township 22 North,
Range 3 East in Whiteside County, Illinois."

b. "Section 35, Township 22 North,
Range 5 East in Whiteside County, Illinois."

2. A Petition for Variance was filed by the City of Fulton on December 30, 1974, seeking permission to continue operation of a solid waste management site without the required Agency permit. City of Fulton v. EPA, PCB 74-490 (April 10, 1975). The Board entered an Interim Order in this case on January 3, 1975, requiring the submission of additional information by Fulton, to which Fulton responded in a letter filed January 20, 1975.

3. On April 3, 1975, the Attorney General filed an Amended Complaint in the instant case, adding an allegation of violation of §21(e) of the Act, and changing the location of the purported sites in violation:

a. "Section 33, Township 22 North, Range 3 in Whiteside County, Illinois."

b. "Section 35, Township 22 North, Range 3 in Whiteside County, Illinois."

In all other respects, the two counts in the Amended Complaint were identical, and the Amended Complaint was identical to the original Complaint.

4. On April 10, 1975, this Board granted Fulton a Variance in PCB 74-490, granting permission to operate a solid waste management site without the permit required under Rule 202(b)(1) and the Act. The Variance period under PCB 74-490 was December 30, 1974, until October 20, 1975. The Variance was granted, in part, due to default by the Respondent Agency.

5. On August 13, 1975, a hearing was held in the instant case; Respondent Fulton defaulted. Additionally, the Attorney General showed that Fulton had failed to respond to a properly served Request for Admissions, thus admitting essentially all of the allegations in the Amended Complaint.

6. On October 16, 1975, the Board entered an Interim Order in this case, finding Fulton in violation of §21(e) of the Act and Rule 202(b)(1), but remanding the matter to the Hearing Officer for further hearing so that the Board could fashion a final remedy based on adequate facts, and a situation other than default by one of the parties.

7. Also on October 16, 1975, the Board denied a Motion by Fulton to extend the Variance granted on April 10, 1975 in PCB 74-485.

8. A further hearing was held in the instant case on November 24, 1975, at which all parties were finally present; sufficient testimony was taken, and exhibits entered, to allow the entry of this final Opinion and Order.

The facts adduced at the November 24, 1975 hearing allow us to find the following:

1. Fulton did indeed have two solid waste sites in Whiteside County. One site (#1) was located near the southwest edge of the City, and the other (#2) several miles southeast of the City.

2. Excepting the earlier default by Fulton, there is no indication that Site #2 was operated after July 27, 1974, after which date the permit requirement became effective.

3. Site #1 was operated without a permit from July 27, 1974 until December 30, 1974, after which time the Variance granted in PCB 74-490 became effective. That site was closed following the expiration of the Variance on October 20, 1975. The Record does not indicate whether Site #1 was closed in accordance with our Rules, but the Record does show that Fulton now disposes of its rubbish at another, unrelated site some miles away.

4. Site #1 was operated in general conformity with this Board's Rules and Regulations, excepting the permit requirement. There is no indication of environmental damage resulting from the unpermitted operation of Site #1.

An additional finding, from PCB 74-490 (the Variance case), remains unchallenged:

5. Fulton applied for a permit for one of its sites (the record is unclear as to which site) in June, 1973, at a cost in excess of \$2,500. The fate of that permit application is unclear.

Turning to the factors in §33(c) of the Act, (and keeping in mind Fulton's defaults), we conclude that our findings of violation in the October 16, 1975 Interim Order remain valid. Now, in addition to that default and the admissions by virtue of the Attorney General's Request for Admissions, Fulton has explicitly admitted violation as regards Site #1, (R.30). While the direct injury to persons or the environment may not be great here, and the sites may have had considerable social and economic value, such value is considerably lessened by operation in contravention of the permit requirement, which is designed expressly to protect persons and the environment. Without the permit process, the state is unable to judge site suitability, and prevent the use of unsuitable sites. It is both technically practicable and economically reasonable to obtain the required permit, unless the site is not suitable for use as a sanitary landfill.

Keeping in mind those same §33(c) factors, we feel that a penalty is mandated here, for the protection of the permit system, which is itself designed to help in achieving the goals of the Act. There is some evidence that the City of Fulton's attorney was unclear as to the nature of the enforcement action, thinking that it was somehow connected to a clerical error in connection with the Variance case, PCB 74-490. This cannot totally excuse Fulton's default, in either this case or its original obligation to obtain the required permits. A penalty of \$250 will be adequate.

We shall order that Fulton properly close both sites, unless the proper permit is obtained for one or both of them.

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 City of Fulton is found on default to have operated two solid waste management sites in Whiteside County without the proper operating permits from the Environmental Protection Agency, in violation of §21(e) of the Environmental Protection Act and Rule 202(b)(1) of Chapter 7: Solid Waste, of the Pollution Control Board Rules and Regulations.

2. Respondent shall, within 30 days of the date of this Order, pay as a penalty for said violations the sum of Two Hundred Fifty Dollars (\$250.00), payment to be made by certified check or money order to:

Environmental Protection Agency
Control Program Coordinator
2200 Churchill Road
Springfield, Illinois 62706

3. Respondent shall cease and desist all operations at the subject solid waste management sites, and shall properly close said sites in conformity with the applicable rules of Chapter 7: Solid Waste, of the Pollution Control Board Rules and Regulations, by March 15, 1976, unless and until all proper operating permits have been applied for and received from the Environmental Protection Agency.

4. That portion of the Amended Complaint herein alleging violation of §21(b) of the Environmental Protection Act is dismissed.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Final Opinion and Order were adopted on the 18th day of December 1975 by a vote of 4-0 .



Christan L. Moffett, Clerk
Illinois Pollution Control Board