

ILLINOIS POLLUTION CONTROL BOARD  
August 14, 1975

ENVIRONMENTAL PROTECTION AGENCY,                    )  
                                                          Complainant,                                            )  
                                                          )  
                                                          v.                                                            )  
                                                          )  
                                                          PCB 74-415  
                                                          )  
WAUCONDA SAND AND GRAVEL COMPANY,                    )  
an Illinois Corporation,                                    )  
                                                          Respondent.                                                )

Mr. Jefferey Herden, Assistant Attorney General, appeared for the Complainant,  
Mr. Joseph L. Rorke, Jr., Attorney, appeared for the Respondent.

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

This matter comes before the Board on an enforcement complaint filed by the Environmental Protection Agency (Agency) on November 8, 1974. The complaint alleged that Respondent Wauconda Sand and Gravel Company (Wauconda) had operated an 80 acre solid waste management site in Lake County, Illinois, without an operating permit from the Agency, thereby in violation of Rule 202(b)(1) of Chapter 7: Solid Waste of the Pollution Control Board (Board) Rules and Regulations, and Section 21(b) of the Environmental Protection Act (Act). Ill. Rev. Stat., Ch. 111 1/2, Section 1021(b) (1973). An amended complaint was subsequently filed on March 28, 1975; the amended complaint was essentially similar to the original, adding only an allegation of violation of Section 21(e) of the Act. The amended complaint was subsequently withdrawn by the Attorney General at the hearing held in this matter on April 14, 1975, in Wauconda, Illinois (R. 3).

At the hearing held, there was no question of two important facts. First, Respondent Wauconda was in operation as a solid waste management site after July 27, 1974. Second, Wauconda did not have an operating permit, as required by this Board's Rules, at any time prior to the filing of the complaint in this matter. These matters were admitted by Respondent's president (R.25, 29), and its counsel (R.105). Respondent's defense instead emphasized its diligence in attempting to obtain a permit, and various matters of mitigation.

The facts presented at the hearing unquestionably show a violation. Although Respondent apparently did expend considerable effort to obtain a development and operating permit for the site in question,\* the record also shows that these efforts did not commence until January, 1974 (R.39). The record shows that Respondent's president was familiar with other provisions of the solid waste management rules as passed by the Board in 1973, and that if permit application preparations had started at that time, the permit could have been completed and submitted in May or June, 1974 (R.79).

In determining whether a finding of violation, and an assessment of a penalty, are warranted here, the Board must examine the factors contained in Section 33(c) of the Act. The Board has previously stated the necessity of a viable permit system for solid waste management sites, to prevent serious injury to the environment. The injury inflicted by a failure to comply with the permit system requirements is of sufficient magnitude to require both findings of violation and the imposition of penalties. Against this, however, must be balanced the social and economic value of the source in question. Testimony in this matter indicates that the landfill site in question provides refuse disposal for 300,000 area residents; the need for the site was also testified to by citizen witnesses (R.31,37,98). It appears that the site has been in operation for about 33 years (R.93), and that it has remained open while many surrounding sites have closed.

But it must be remembered that the potential for damage from an 80 acre solid waste management site is also great; the site in question receives in excess of 1,500 cubic yards of refuse daily, mostly of domestic origin. The Board noted, when adopting the Solid Waste Regulations, that sanitary landfills must be properly planned, particularly as regards ground water and subsurface characteristics, to prevent pollution of any waters of the state. In the Matter of: Chapter 7: Solid Waste Rules and Regulations, R72-5, 8 PCB 695, 697, 698 (1973). We require permits in such situations to prevent potential environmental problems from being realized.

\* (Eg. R.22-31; Resp. Ex. b)

The technical practicability and economic reasonableness of obtaining the required permit for the subject site were the subject of considerable testimony. As noted above, however, it appears that timely commencement of application preparations would have resulted in a timely filing of the permit application. (A permit application was filed on November 23, 1974 (R.12), and was subsequently rejected by the Agency on January 20, 1975.)

There was also, at the hearing, considerable testimony by citizen witnesses as to conditions on the site (e.g. R.64-91. That testimony, and the accompanying exhibits, indicate that operation of the present site, in its present configuration, may well be causing problems for adjacent citizens. It is just such problems that the permit requirement is designed to prevent. Balancing these factors, it is apparent that a finding of violation is required, and that the imposition of a penalty is necessary for the protection of the permit system.

A final defense of the Respondent, that the permit in question was issued by virtue of the Agency's inaction, must also be discussed. It was Respondent's contention that its operating permit application, which was not rejected for lack of adequate information by the Agency until after a period of 59 days, was issued by virtue of Rule 205(g) of the Board's Solid Waste Regulations. However, it is apparent from Respondent's Exhibit B that the application submitted to the Agency was concerned with developmental and operating permits. By so designating the permit application, Respondent allowed the Agency 90 days to take action on its application. Its defense, therefore, falls. Further, the existence of a valid permit would be a matter of mitigation, and not approach the merits of this issue; the period in question is that between July 27, 1974, and the date on which the complaint was filed, November 8, 1974.

Balancing all the factors above, it is the opinion of the Board that a penalty of \$2,000 will be sufficient in this case to protect the permit system. That system is necessary to insure that Respondent's site, and all others like it, will be run in an environmentally acceptable manner. The penalty which we impose here is for violation of Rule 202(b)(1) insofar as the Agency has withdrawn its allegation of violation of Section 21(e) of the Act.

The Board has previously stated that a violation of Rule 202(b)(1) will not support a finding of violation of Section 21(b) of the Act. e.g., EPA v. E & E Hauling, PCB 74-473 (March 26, 1975); EPA v. Robinson, PCB 74-391 (April 4, 1975. Due to serious problems of notice to Respondent of the nature of the alleged violations, and the inadmissible quality of certain evidence presented at the hearing held in this matter, the Board does not here approach the issue of whether a failure to comply with substantive provisions of Chapter 7: Solid Waste, will support a finding of violation of Section 21(b) of the Act. No violation of Section 21(b) of the Act has been shown here; that section of the complaint alleging open dumping must be dismissed.

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, Wauconda Sand and Gravel Company, Inc., is found to have operated a solid waste management site without the required permit from the Environmental Protection Agency, in violation of Rule 202(b)(1) of Chapter 7: Solid Waste of the Pollution Control Board Regulations, from July 17, 1974, until November 8, 1974.
2. For the above described violation, Respondent Wauconda Sand and Gravel Company shall pay a penalty of \$2,000, payment to be made by a certified check or money order to:

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

3. That portion of the complaint in this matter alleging violation of Section 21(b) of the Environmental Protection Act is dismissed.

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 August, 1975 by a vote of 5-0.

  
Christan L. Moffett, Clerk  
Illinois Pollution Control Board