

ILLINOIS POLLUTION CONTROL BOARD
July 17, 1975

ENVIRONMENTAL PROTECTION AGENCY,)
 Complainant,)
))
 v.) PCB 75-43
))
CITY OF RUSHVILLE,)
 Respondent.)

MR. ANTHONY B. CAMERON, Assistant Attorney General,
appeared for the Complainant;
CARSON D. KLITZ, Attorney, appeared for the Respondent.

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

A Complaint filed by the Environmental Protection Agency (Agency) on January 29, 1975, charged that Respondent City of Rushville (Rushville) operated a solid waste management site in Schuyler County, Illinois, without an operating permit from the Agency, from July 27, 1974, until January 29, 1975. Specific dates of operation without a permit were specified as August 7, 1974, September 11, 1974, and October 9, 1974. Such operation is alleged to constitute a violation of Section 21(e) of the Environmental Protection Act (Act) and Rule 202(b)(1) of Chapter 7: Solid Waste, of the Pollution Control Board (Board) Rules and Regulations.

A hearing was held in Rushville on May 8, 1975. The Agency submitted a stipulated statement, concurred in by Respondent, admitting both the operation of the solid waste management site by Respondent and the failure of Respondent to possess the permit required under Rule 202(b)(1). Respondent also admitted violation of the Act and the Board's Regulations. The bulk of the evidence at the hearing concerned questions of aggravation and mitigation.

Turning first to matters of aggravation, the stipulated facts (R.11), include a statement indicating that between November 22, 1973, and January 29, 1975, Rushville received ten letters from the Agency indicating that a permit would be required for its solid waste management site (R.10). Although it is not clear from the record when Rushville did

apply for an operating permit, it is a fact that no application was filed until well after July 27, 1974, after which date a permit was required under Rule 202(b)(1). The Agency did stipulate (R.56), that Rushville has formally applied for a permit. Action on the permit could not have been taken by Rushville without a "hydrogeologic survey", which was not received by Rushville from the Agency until approximately February, 1975 (R.39,82). (That hydrogeologic survey will also be discussed in the Board's consideration of matters offered in mitigation.) The attorney for Rushville, in closing argument, stated that, "In essence, the position of the city is that, true, they have been dilatory in not obtaining the permit." (R.79).

Despite the latter admission regarding Rushville's permit application, the testimony offered in mitigation shows that Rushville was not entirely inactive after it first learned of the permit requirement. Mr. Tomlinson, a Rushville Alderman, and Chairman of the City Dump Committee, stated that he first went to Springfield to pick up a permit application in 1973 (R.15). Unable to fill out the application personally, he took it to the City's Attorney, who stated that an engineer would be needed to prepare the application (R.49).

After first determining that Rushville could not afford a consulting engineer to work on the matter, Mr. Tomlinson attempted to obtain assistance from the Schuyler County engineer (R.16,35). He also attempted to obtain state aid in the form of a grant, to finance the preparation of a permit application (R.17). Further, in continued effort to obtain grant funding, he participated in the creation of the Two Rivers Regional Agency, which lists as among its major purposes, the establishment of a viable area-wide solid waste disposal plan (R.21,23,30).

Other testimony, uncontroverted, indicates that Rushville's dump is the only one operated "with any semblance of authority" in Schuyler County (R.54). Refuse is apparently accepted from Rushville, Schuyler County, the State of Illinois, and other adjoining counties; other nearby cities and commercial operations also use the Rushville city dump (eg. R.19,55).

Several witnesses (eg. R.24,55), testified to the effect that Rushville has made a good faith effort to comply with Agency rules and regulations, as well as those promulgated by the Board. The city has attempted to comply with all suggestions offered in conjunction with Agency visits, and has expended considerable funds in attempts to remain in compliance with the substantive Rules and Regulations for landfill sites.

Other testimony also indicated that there is not a great likelihood of environmental damage resulting from the operation of the admittedly unpermitted site operated by Rushville. The ground being used in the land fill operation is old strip mined property, which has been turned over to a depth of 40 feet. In this area of sharp ridges and artificial depressions, Rushville is burying its garbage at a maximum depth of 15 feet (R.20). This factor, taken in conjunction with the good faith evidenced by Rushville's other testimony, would argue against the imposition of a penalty.

That view is strengthened by the fact that the Agency apparently failed to forward to Rushville a hydrogeologic survey requested by Rushville in about September, 1974. In closing argument, the Agency notes that the information in that survey was received by the Agency in about November, 1974, and was not then forwarded to Respondent until approximately February, 1975. Because of this, the Agency feels that a penalty would be inappropriate if applied to any period after November, 1974.

Taking into account these facts, as well as the considerations in Section 33c of the Act, the Board feels that a penalty is appropriate in this matter. The bulk of the evidence offered by Rushville in mitigation is premised on Rushville's inability to pay for a permit application out of its own funds. While the record does support Rushville's contention that it has a small population, Rushville's inability to pay for a consulting engineer has not been shown by the evidence (eg. 21,65). Rushville merely states that the expenditure required would be larger than those normally approved by so small a city, and that the city does not wish to add an extra burden to its citizens (R.66).

The Board has in the past emphasized the necessity of a viable permit system with regard to solid waste management sites, stating that such a system is necessary to protect the environment, including waters of the state which may be contaminated by improperly run landfill sites. In the Matter of: Chapter 7: Solid Waste Rules and Regulations, R72-5, 8 PCB 695, 697, 699 (1973).

Weighing both the factors offered in mitigation and the value of the permit system, we feel that a penalty in the amount of \$100 will serve to both reaffirm our resolve as regards the permit system and recognize the problems encountered by Respondent.

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 Rushville is found to have operated a solid waste management site in Schuyler County, Illinois, in violation of the operating permit requirement of Section 21(e) of the Environmental Protection Act and Rule 202(b)(1) of Chapter 7: Solid Waste of the Board's Rules and Regulations, during the period July 27, 1974, to January 29, 1975.

2. For the above described violation, Respondent City of Rushville shall pay as a penalty the amount of \$100, payment to be made by certified check or money order to:

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

3. Respondent City of Rushville shall, unless an operating permit for the subject solid waste management site has been issued by the Environmental Protection Agency within 120 days of the date of this Order, cease and desist all operations of the subject solid waste management site in violation of the Environmental Protection Act and this Board's Rules and Regulations, and shall properly close and cover such site in conformance with this Board's Rules and Regulations.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 17th day of July, 1975 by a vote of

5-0.


Christan L. Moffett, Clerk
Illinois Pollution Control Board