

ILLINOIS POLLUTION CONTROL BOARD
June 6, 1975

ENVIRONMENTAL PROTECTION AGENCY,)
Complainant,)
)
v.) PCB 74-446
)
WILLIAM FREEDING AND WILLIAM)
BUITEN d/b/a/ LANDFILL ENGINEERING)
COMPANY,)
Respondents.)

Mr. Steven Z. Weiss appearing on behalf of Complainant;
Mr. Melvin J. McGowan appearing on behalf of Respondent.

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

This matter comes before the Pollution Control Board (Board) upon the amended complaint of the Environmental Protection Agency (Agency) against William Freeding and William Buiten, d/b/a Landfill Engineering Company (Landfill) for violation of Rule 202(b)(1) of Chapter 7 of the Illinois Pollution Control Board Rules and Regulations and §§21(b) and 21(e) of Illinois Environmental Protection Act (Act). The original complaint was filed November 27, 1974 and a motion to amend the complaint to conform with the proof pursuant to procedural Rule 308 was filed March 31, 1975. We hereby grant Complainant's motion to amend the complaint, there being no objection by and no prejudice to Landfill.

Rule 202(b)(1) states:

Existing Solid Waste Management Sites.

Subject to such exemption as expressly provided in Section 21(e) of the Environmental Protection Act as to the requirement of obtaining a permit, no person shall cause or allow the use or operation of any existing solid waste management site without an Operating Permit issued by the Agency not later than one year after the effective date of these Regulations.

Rule 202(b)(1) became effective on July 27, 1973.

Sections 21(b) and 21(e) state that no one shall:

- (b) Cause or allow the open dumping of any other refuse in violation of regulations adopted by the Board;

- (e) Conduct any refuse-collection or refuse-disposal operations, except for refuse generated by the operator's own activities, without a permit granted by the Agency upon such conditions, including periodic reports and full access to adequate records and the inspection of facilities, as may be necessary to assure compliance with the Act and with regulations adopted thereunder, after the Board has adopted standards for the location, design, operation, and maintenance of such facilities;

The facts in this action were presented to the Board upon stipulation of the parties. Landfill has operated the solid waste management site, located at the southeast corner of Milwaukee and Deerfield Roads in Lake County, from September, 1966 to September 30, 1974. The site was formerly a gravel pit and was open five and one-half days per week. Landfill ceased business activities, except for accepting cover material, when the site was filled on September 30, 1974. Respondent stated that it grossed between \$15,000 and \$25,000 per month from refuse while in operation and an additional \$15,000 to \$40,000 from the sale of sand.

Respondent states that it always had sufficient financial resources to obtain a permit (R7). Landfill's reason for not applying or obtaining a permit was that the projected closing date of the site was before July 27, 1974. However, according to Landfill, the fill necessary to cover the site was inadequate because of its unavailability due to recession in the construction trade (R7,8). We note that 80% of the refuse accepted was compacted household garbage (Stip. p.2). Landfill states that it never applied for a variance because it was not familiar with the variance procedure, and, therefore, did not know it was available to it (Stip. p.3).

The Agency sent Landfill seven letters from December, 1973 to November, 1974 discussing the potential violation of operating without a permit. These letters are attached to the stipulation as Exhibits "A" through "G". The letters allege violations of Rule 305 in that Respondent failed to meet cover requirements. In addition, on page 4 of the stipulation it is stated that final cover in some areas was inadequate. The Board has not been informed as to the extent of the violations and Landfill does not deny that there were violations. In mitigation, Landfill states (R22) that it will conform to Rule 305 as clean fill is made available.

The Agency's complaint alleges a violation of Section 21(b) due to Respondent's operation without a permit. As operating without a permit does not constitute open dumping, we cannot find a violation of Section 21(b) based upon the amended complaint. See EPA v. E & E Hauling, Inc., PCB 74-473 (1975). Therefore, the portion of the complaint referring to a violation of Section 21(b) must be dismissed.

It is uncontroverted that Landfill operated a solid waste management site without a permit. The Board points out the importance of the permit system in regulating solid waste management sites so as to protect the environment and the public. When a permit is issued, the applicant has proved that the development and/or operation of the sanitary landfill will not cause or tend to cause water or air pollution; will not violate applicable air or water quality standards; and will not violate any rule or regulation adopted by the Board (Rule 316). Without a permit system, operators of landfills may inadvertantly cause pollution, thereby injuring the public. To obtain a permit, the applicant must perform certain tests to determine the likelihood of leachate; the effect of the landfill upon public water supplies; soil classification, grain size distribution permeability, compactability and ion-exchange properties of subsurface materials.

In addition various maps must be prepared, borings and water samples taken. Additional information as listed in Rule 316 is also required. The application is an expensive undertaking. To allow an individual to operate a landfill without a permit does a disservice to the public and potentially endangers the life and property of population surrounding the landfill. Respondent has failed to justify its failure to obtain a permit and we find a violation of Rule 202(b)(1) and Section 21(e). We, therefore, assess a penalty of \$1500.00 for violation of Rule 202(b)(1) and Section 21(e).

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) Respondents William Freeding and William Buiten d/b/a Landfill Engineering Company are found to have operated a solid waste management site in Lake County, without

the required operating permit from the Agency, in violation of Rule 202(b)(1) of Chapter 7: Solid Waste Rules and Regulations and Section 21(e) of the Act, during the period July 27, 1974 and September 30, 1974; and

2) Respondents shall pay, as a penalty, the sum of \$1500.00, payment to be made within 35 days of the date of this Order, by certified check or money order to:

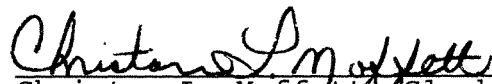
State of Illinois
Fiscal Services Division
Environmental Protection Agency
2200 Churchill Road
Springfield, Illinois 62706

3) Respondents shall cease and desist all refuse disposal activities, and shall promptly and properly close and apply final cover to the site in accordance with applicable Board regulations; and

4) That portion of the complaint alleging violation of Section 21(b) of the Act is hereby dismissed.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 5th day of June, 1975 by a vote of 5-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board