

ILLINOIS POLLUTION CONTROL BOARD
June 13, 1975

ENVIRONMENTAL PROTECTION AGENCY,)
)
 Complainant,)
)
 vs.) PCB 74-385
)
 VILLAGE OF PALATINE, a municipal)
 corporation,)
)
 Respondent.)

JEFFREY HERDEN, Assistant Attorney General for the EPA
WILLIAM LITTLEJOHN, Attorney for Respondent

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

The Environmental Protection Agency alleges that the Village of Palatine, as owner and operator of a waste management site in Cook County, Illinois, has violated Rule 202(b) (1) of the Solid Waste Regulations and Sections 21(b) and 21(e) of the Environmental Protection Act. The violations are alleged to have occurred from July 27, 1974 to October 25, 1974. A public hearing on this matter was held in February 1975.

Kenneth Bechely, an Agency employee, testified that he visited Respondent's waste management site on three occasions. On these visits he noted a small amount of refuse at the site but "there wasn't much going on" (R. 5). He did not observe any refuse being dumped at the site.

After Bechely's first visit, he telephoned Palatine's Village Manager, Anton Harwig, to inquire about operations at the site. As Bechely recalled the August 2, 1974 conversation, Harwig indicated that Respondent was operating the site on a limited basis and that an application for a permit was being prepared. A check of Agency files by Bechely on August 8, 1974 disclosed that Respondent had not applied for a permit at that time.

Respondent was granted a development permit on January 20, 1975 (Respondent Exhibit #1). Under conditions imposed by the development permit, Respondent is permitted to dispose of broken concrete and asphalt, wood chips, street sweepings and clay only. Bechely testified that he observed only materials allowed by the permit during his visits to the site.

Harwig testified that he became Village Manager on April 1, 1974. The previous Village Manager had resigned in August 1973 causing the Village affairs to be handled by an Acting Village Manager. Harwig first became aware of the permit requirement on May 1, 1974 when he received a letter from Mr. Clark, Manager of the Agency's Surveillance Section, Division of Land Pollution Control (R. 12). Harwig consulted with the former Acting Village Manager and learned that the Village did not have the necessary permit application papers. He then telephoned the Agency to request the necessary permit application forms. The forms were not received following this request (R. 14).

On June 4, 1974 Harwig received another letter from Clark advising that no permit for the site had been issued by the Agency. Harwig wrote to Clark that same day requesting permit application forms (R. 14). Upon receiving the permit application forms on June 19, 1974, Respondent found it necessary to hire outside help to complete a required topographical survey. This survey was delayed because a "swamp kind of a situation" prevented the surveyors from getting into the site. The completed permit application form was forwarded to the Agency on November 18, 1974 (R. 15).

Special condition #2 of the development permit states: "The site shall be in complete compliance with the general requirements of the Environmental Protection Act and Rules and Regulations prior to the issuance of an operating permit." Special condition #3 of the development permit states: "Inasmuch as the deadline for existing sites to obtain operating permits is now fully five months past, you are expected to request, in writing, a pre-operational inspection from this office not more than 30 days from the date of this letter."

Harwig testified that he thought the January 20, 1975 permit was an operating permit (R. 19). Bechely testified that Respondent has not obtained an operating permit for the waste management site (R. 7).

On the record presented, the Board finds that Respondent has violated Rule 202(b)(1) of the Solid Waste Regulations and Section 21(e) of the Environmental Protection Act. Nothing in the record shows that these violations injured or interfered with the protection of the health, general welfare or physical property of the people of Illinois. Neither the social or economic value of the site nor the suitability of the site to the area in which it is located is discussed in this record. Since the Agency granted a development permit for the site, it would seem

reasonable at this point to conclude that suitability of location is not a major consideration in this proceeding. Likewise, the fact that Respondent was able to secure the development permit without apparent difficulty would indicate that it was both technically practicable and economically reasonable for Respondent to comply with the Statute and Regulations.

There can be no finding of violation regarding Section 21(b) of the Environmental Protection Act since there is nothing in the record which purports to show that Respondent engaged in the practice of open dumping of refuse.

The Board recognizes that Respondent's administrative changes mitigate these violations. Some weight will also be given to testimony showing that the Agency did not respond to Respondent's initial request for permit application forms and that the surveyor had some difficulty in obtaining access to the site because of the "swamp" conditions. Another mitigating fact is that any monetary penalty here will ultimately be paid by the taxpayers, those same individuals who suffer the environmental damage resulting from inaction of their officials.

However, the violations cannot go entirely unpunished. The permit system is vital to pollution control efforts in Illinois. If the permit system could be ignored with impunity the State would be greatly hampered in its attempt to protect the public health, determine suitability of the disposal site and feasibility of compliance with the Regulation.

Having considered all aspects of this case, it is the finding of the Pollution Control Board that Respondent shall pay a monetary penalty of \$100 for the violations found in this proceeding. In addition, Respondent will be required to secure the long over-due operating permit within 120 days of the date of this Order or properly close its waste management site.

This Opinion constitutes the findings of fact and conclusions of law of the Illinois Pollution Control Board.

ORDER

It is the Order of the Pollution Control Board that:

1. Village of Palatine shall pay to the State of Illinois by June 30, 1975 the sum of \$100 as a penalty for the violations of Rule 202(b)(1), Solid Waste

Regulations, and Section 21(e), Environmental Protection Act found in this proceeding. Penalty payment by certified check or money order payable to the State of Illinois shall be made to: Fiscal Services Division, Illinois EPA, 2200 Churchill Road, Springfield, Illinois 62706.

2. Respondent shall properly close its waste management site in Cook County, Illinois if an operating permit for this site has not been obtained within 120 days of the date of this Order.

3. The allegation that Respondent violated Section 21(b) of the 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 13th day of June, 1975 by a vote of 5-0.


Christan L. Moffett, Clerk
Illinois Pollution Control Board