



regarding the presence of vectors, but there was considerable affirmative testimony as to the rodent control program utilized by the operation (R. 39-40). The Agency inspector testified that he had not seen any rodents during any of his inspections of the site (R. 14).

We find no violation of Rule 4.03 (e) of the Rules requiring adequate fencing of the site. The record simply does not support a finding of inadequate fencing.

The questions of open dumping (Section 21 (b) of the Act and Rule 3.04 of the Rules) and daily cover (Rule 5.07 (a) of the Rules) are more difficult. Testimony of the Agency witness indicates that more cover was needed on seven separate occasions and adequate cover was provided on only two occasions (R. 12). Just what is meant by "more daily cover" is not clear. Unfortunately, no photographs of the site were introduced into the record, and without such photographs it is often difficult to determine whether or not there was open dumping of refuse or placement of adequate cover. Because of the incomplete nature of proof, we find no violation of the six inch daily cover requirement of Rule 5.07 (a) of the Rules or of the open dumping prohibition of Section 21 (b) of the Act and Rule 3.04 of the Rules.

The only two allegations proven are operation of the site without a permit and failure to provide shelter for the site's operating personnel. There was uncontroverted testimony that there were no buildings on the site (R. 27), and there was no testimony indicating that any shelter was available off the site. Accordingly, we find a violation of Rule 4.03 (c) of the Rules. There was no permit issued by the Illinois Department of Public Health, nor was the site ever registered with the Illinois Department of Public Health (R. 18), as required by Rule 1.01 of the Rules. Neither has a permit been issued by the Environmental Protection Agency in accordance with Section 21 (e) of the Act. In mitigation of these violations, Petitioner does have a permit to operate a sanitary landfill from the Will County Health Department (R. 37; Respondent Exhibit 2). Furthermore, Respondent is diligently pursuing obtaining a permit from the Environmental Protection Agency (R. 42 et. seq.).

We repeat here what we have said before about the necessity for obtaining an Agency permit. Section 21 (e) of the Act requires a permit for all refuse disposal sites and facilities (with an exception irrelevant to this case) "after the Board has adopted standards for the location, design, operation and maintenance of such facilities." The Rules, which antedated the Act, became regulations of the Board pursuant to Section 49 (c) of the Act, and have now been identified as PCB Regs., Ch. 7, Part II. Therefore, by operation of statute, Agency permits have been required for all landfill sites since July 1, 1970, the effective date of the Act. See EPA v. City of Woodstock, 72-159, 5 PCB \_\_\_\_\_, (November 14, 1972).

In view of all the circumstances, we do not believe a monetary penalty is justified in this case. The only violation found relating to site operation, failure to provide shelter, is relatively minor. The failure to have an Agency permit is more serious; however, a penalty for this violation may be excused here because in an attempt to obtain an Agency permit (made before the filing of this proceeding), Respondent has retained consulting engineers at considerable expense (R. 36, 52, 53). The good faith of the operator, as evidenced by his attempts to obtain an Agency permit well before a Complaint was filed against him, militates against assessment of any penalty.

This opinion constitutes the findings of fact and conclusions of law of the Board.

ORDER

Respondent shall obtain a permit from the Agency within six months of the entry of this Order.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, certify the above Opinion and Order was adopted by the Board on the 21<sup>st</sup> day of November, 1972, by a vote of 5 to 0.

Christan L. Moffett

