

ILLINOIS POLLUTION CONTROL BOARD  
August 22, 1984

ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
 )  
Complainant, )  
 )  
v. ) PCB 83-227  
 )  
RUSSELL M. BLISS and )  
JERRY RUSSELL BLISS, INC., )  
a Missouri corporation, )  
 )  
Respondents. )

MR. VINCENT W. MORETH, ASSISTANT ATTORNEY GENERAL, APPEARED ON BEHALF OF THE COMPLAINANT.

MR. THOMAS J. IMMEL, ATTORNEY AT LAW, APPEARED ON BEHALF OF THE RESPONDENTS.

OPINION AND ORDER OF THE BOARD (by W. J. Nega):

This matter comes before the Board on the December 9, 1983 Complaint brought by the Illinois Environmental Protection Agency (Agency).

Count I of the Complaint alleged that the Respondents caused or threatened the discharge of contaminants into the environment so as to cause and/or tend to cause water pollution and deposited contaminants upon the land in such place and manner as to create a water pollution hazard in violation of Section 12(a) and Section 12(d) of the Illinois Environmental Protection Act (Act) and installed and operated facilities and equipment capable of causing or contributing to water pollution without having a permit granted by the Agency in violation of Section 12(b) of the Act.

Count II alleged that the Respondents have caused or allowed the open dumping of wastes in violation of Section 21(a) of the Act; have conducted a waste storage and disposal operation with the necessary Agency permit in violation of Section 21(d) of the Act; and have stored and disposed of hazardous waste at a site or facility which failed to meet the requirements of the Act and regulations thereunder in violation of Section 21(e) of the Act.

Count III alleged that the Respondents owned or operated an existing hazardous waste management facility without having obtained interim status pursuant to 35 Ill. Adm. Code 700.105 in violation of Section 21(f) of the Act.

A hearing was held on June 5, 1984 in Belleville, Illinois and the parties filed a Stipulation and Proposal for Settlement on June 25, 1984.

The parties have stipulated that Respondent Russell M. Bliss (R. M. Bliss) is a Missouri resident who was the owner and operator of Bliss Waste Oil Service, an unincorporated Missouri business, prior to November 15, 1978. The Bliss Waste Oil Service was engaged in the business of collecting and selling used oils. (Stip. 2). On November 15, 1978, Respondent R. M. Bliss formed a Missouri corporation (i.e., Jerry Russell Bliss, Inc.) which was (for purposes of this proceeding only) a successor business entity to Bliss Waste Oil Service. (Stip. 2-3). Respondent R. M. Bliss solely operated Jerry Russell Bliss, Inc. (Bliss, Inc.) as President until January 1, 1983. Respondent R. M. Bliss has indicated that, after January 1, 1983, all his ownership and interest in Bliss, Inc. was sold and the operation of Bliss, Inc. was taken over by Respondent Jerry Russell Bliss (J. R. Bliss). J. R. Bliss is the son of Respondent R. M. Bliss. Respondent R. M. Bliss has stated that he currently is retired. (Stip. 3). However, the Agency has noted that it "neither concurs nor denies the aforementioned representations that subsequent to January 1, 1983 Russell M. Bliss sold all his ownership interest in Bliss, Inc. or, that the operation of Bliss, Inc. was taken over by his son and Russell M. Bliss is now retired." (Stip. 3).

Respondents R. M. Bliss and Bliss, Inc. conducted waste oil storage, transportation, and resale operations in Missouri and Illinois at all times relevant to these proceedings. Although the Respondents held a Special Waste Hauler permit issued by the Agency, Respondent Bliss, Inc. was not registered with the Office of the Secretary of State of Illinois as a foreign corporation authorized to do business in Illinois. (Stip. 3). Thus, Bliss, Inc. was not officially authorized to do business in Illinois.

At all times pertinent to the Complaint, Clayton Chemical Company, a Missouri corporation which was authorized to do business and doing business in Illinois, owned a 4.13 acre parcel of land in Lot 304, Cahokia Commons, Township 1 North, Range 10 West, 3rd PM in the City of Sauget in St. Clair County, Illinois (the "site"). At all times relevant to the Complaint, and ending January 1, 1983, Respondent R. M. Bliss and later Respondent Bliss, Inc. successively have owned and operated four above-ground storage tanks which were used exclusively by the Respondents and which were located in the northwest corner of the site owned by Clayton Chemical Company. (Stip. 3-4). It is stipulated that, at all times pertinent to these proceedings, Respondent R. M. Bliss has personally been the owner of these above-ground tanks. (Stip. 4). These four storage tanks are utilized pursuant to a Development and Operating Permit issued by the Agency (Permit 1979-19-DE/OP) to Clayton Chemical Company, as

owner of the site, for the storage and processing of liquid special waste. (Stip. 4).

In addition to the four above-ground storage tanks, a fifth tank was installed by R. M. Bliss below the ground adjacent to the four tanks during the fall of 1974. Respondent R. M. Bliss has indicated that he is uncertain of the exact date that this underground tank was installed, but believes that it was sometime during the autumn of 1974. (Stip. 4). The parties have stated that no Agency permit was issued for this fifth tank.

This underground tank, which had been removed from a gas station, had three holes in its side. Each hole was about 3 1/2 inches in width and ranged from approximately 1 1/2 inches to 3 inches in height. The lower portion of each hole was rectangular, with the steel walls of the tank appearing bent inwardly like flaps, so that each of the holes appeared to be regularly shaped. These three holes were separated from each other by about 5 1/2 feet and, as measured from the bottom of the underground tank, ranged in height from 4 feet 10 inches to 3 feet 2 inches. Although Respondent R. M. Bliss has denied that he knew of the existence of these three holes, he has admitted that he knew that the tank might leak. (Stip. 4-5).

After Respondent R. M. Bliss installed this underground tank, it was utilized to contain draw-off water from the four above-ground storage tanks until sometime in early to mid-1978. Prior to mid-1978, recoverable oil floating on the water in the tank was pumped out of the tank for re-use on various occasions. (Stip. 5).

It is stipulated that Respondent R. M. Bliss individually deposited, and, in his capacity as President of Bliss, Inc., knowingly allowed contaminated draw-off water to remain in the underground tank. (Stip. 5). Agency tests have demonstrated that this draw-off water was contaminated with 5,600 parts per million (ppm) of polychlorinated biphenyls (PCB's); 22,000 ppm trichloroethylene (TCE); 1,900 ppm tetrachlorethylene; 8,800 ppm toluene; 8,000 ppm xylenes; 3,300 ppm C<sub>3</sub> substituted benzenes; 5,100 ppm C<sub>4</sub> substituted benzenes; 110 ppm C<sub>5</sub> substituted benzenes; 1,200 ppm naphthalene; 1,500 ppm methylnaphthalene; 2,500 ppm dimethylnaphthalene; 1,700 ppm trimethylnaphthalene; 680 ppm phenanthrene; 8,200 aliphatic hydrocarbons, and 2,200 ppm phthalates. (Stip. 5; Comp. 3).

Respondent R. M. Bliss believes that the previously mentioned contaminants apparently reached the underground tank via the drain water from the four above-ground tanks. (Stip. 5). The Agency has noted that, because of the existence of the three holes in the underground tank, it is likely that some of its contents (including the aforementioned contaminants) could be

allowed to discharge into the soil. According to data supplied to the Agency by Clayton Chemical Company in its permit application for the site, the soil near the tanks is highly permeable and the ground water table in the vicinity of the underground tank is very high. (Stip. 6).

On June 6, 1983, the underground tank was removed by Respondent R. M. Bliss at the Agency's request. Agency personnel observed that an unknown amount of the underground tank's contents had leaked from the tank (including contaminated substances). Agency laboratory analysis of the soil surrounding the underground tank indicated contamination and the presence of the following substances: 3,600 ppm PCB's; 710 ppm TCE; 800 ppm tetrachloroethylene; 5,700 ppm toluene; 3,200 ppm xylenes; 6,700 ppm C<sub>3</sub> substituted benzenes; 8,900 ppm C<sub>4</sub> substituted benzenes; 1,100<sup>3</sup> ppm C<sub>5</sub> substituted benzenes; 1,000<sup>4</sup> ppm naphthalene; 1,300 ppm methylnaphthalene; 800 ppm dimethylnaphthalene, and 500 ppm trimethylnaphthalene. (Stip. 6; Comp. 3).

Because of the nature of these chemical contaminants, the potential environmental consequences can be very serious. Polychlorinated biphenyls, which are carcinogenic and acutely and chronically toxic through oral and dermal exposure, can have toxic effects including chloracne and liver atrophy with preceding nausea, vomiting, weight loss, jaundice, edema, and abdominal pain. Even low levels of PCB's in the environment can ultimately result in toxic effects, because PCB's are extremely persistent and bio-accumulate in human and animal organisms with biomagnification of concentrations in the food chain. (Comp. 4). Moreover, under 35 Ill. Adm. Code 721.133(e), the following contaminants are listed as hazardous substances and hazardous wastes: trichloroethylene (a toxic pollutant), tetrachloroethylene (a known carcinogen), toluene (toxic by ingestion, inhalation and skin absorption); xylene, benzene (a known carcinogen), and naphthalene.

The Agency has emphasized that the Respondents' installation and use of the underground tank were at no time authorized by a permit from the Illinois Environmental Protection Agency or the United States Environmental Protection Agency (USEPA), or authorized for interim status pursuant to the Federal or state Resource Conservation and Recovery Act (RCRA) regulations (see: 35 Ill. Adm. Code 700.105). (Stip. 6).

Respondent R. M. Bliss individually did not disclose the existence of the underground tank to the Agency and initially refused to remove it. However, after receipt of the Agency's enforcement notification letter dated April 26, 1983, Respondent R. M. Bliss "subsequently removed said tank, promptly containerized its contents, disposed of all residues and contaminated soils at approved facilities, and cleaned up the site to the Agency's satisfaction". (Stip. 6-7).

The proposed settlement agreement provides that the Respondents admit the violations alleged in the Complaint and agree to: (1) cease and desist from further violations; (2) remedy all known environmental damage at the site, and (3) pay a stipulated penalty of \$4,000.00 in four equal annual installments of \$1,000.00. (Stip. 9-11).

It is stipulated that, at the request of the Agency, Respondent R. M. Bliss has already performed all the following actions: (1) PCB-contaminated materials have been, under Agency supervision, removed from the excavation area, containerized, and disposed of at a federally-approved facility; (2) at least one hundred cubic yards in volume of additional contaminated materials have been, under Agency supervision, properly disposed of at a hazardous waste facility approved by the Agency; (3) the entire transportation, disposal, or storage of these contaminated materials has been performed pursuant to the requisite state and Federal authority (e.g., permits were obtained where necessary), and (4) suitable clean fill materials have been used to fill the hole remaining at the site and "the Agency has approved the entire completed clean-up." (Stip. 9-10).

In evaluating this enforcement action and proposed settlement agreement, the Board has taken into consideration all the facts and circumstances in light of the specific criteria delineated in Section 33(c) of the Act and finds the settlement agreement acceptable under 35 Ill. Adm. Code 103.180.

The Board finds that Respondent R. M. Bliss has violated Sections 12(a), 12(b), 12(d), 21(a), 21(d), and 21(e) of the Act and finds that Respondent Bliss, Inc. has violated Sections 12(a), 12(b), 12(d), 21(e), and 21(f) of the Act. The Respondents will be ordered to cease and desist from further violations, remedy all known environmental damage at the site (which has apparently already been accomplished), and to pay the stipulated penalty of \$4,000.00 in four equal annual installments.

This Opinion constitutes the Board's findings of fact and conclusions of law in this matter.

#### ORDER

It is the Order of the Illinois Pollution Control Board that:

1. Respondent Russell M. Bliss has violated Sections 12(a), 12(b), 12(d), 21(a), 21(d), and 21(e) of the Illinois Environmental Protection Act.
2. Respondent Jerry Russell Bliss, Inc. has violated Sections 12(a), 12(b), 12(d), 21(e), and 21(f) of the Illinois Environmental Protection Act.

3. The Respondents shall cease and desist from further violations.
4. Within 10 days of the date of this Order, the Respondents shall, by certified check or money order payable to the State of Illinois, pay the first installment of \$1,000.00 (on the total stipulated penalty of \$4,000.00) which is to be sent to:

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

The remaining three installments of \$1,000.00 each (on the total stipulated penalty of \$4,000.00) shall be payable on the first, second and third anniversary respectively of this Order. Payments on these installments are to be paid in the same manner and fashion as the first installment.

5. The Respondents shall comply with all the terms and conditions of the Stipulation and Proposal for Settlement filed on June 25, 1984, which is incorporated by reference as if fully set forth herein.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board hereby certify that the above Opinion and Order was adopted on the 22<sup>nd</sup> day of August, 1984 by a vote of 6-0.

Dorothy M. Gunn  
Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board