

ILLINOIS POLLUTION CONTROL BOARD
September 15, 1982

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
v.) PCB 81-182
)
CAPITAL CITY LAND, INC., an)
Illinois corporation,)
MERLE BUERKETT, TOWN AND COUNTRY)
BANK OF SPRINGFIELD, TRUSTEE,)
an Illinois Bank, BUNN PARK)
INDUSTRIES, INC., a dissolved)
Illinois corporation, ESTATE OF)
MAX RISEMAN, deceased,)
MONIKA U. M. WEINER, RICHARD WEINER,)
THOMAS FLATTERY, ERNIE L. SCHMIDT,)
JOHN DOE, JANE ROE, ED EVANS, JOHN)
HOLTMAN, CLARENCE "BUD" GARNER and)
NANCY DiMARTINO,)
)
Respondents.)

MR. GREIG R. SIEDOR, ASSISTANT ATTORNEY GENERAL, APPEARED ON BEHALF OF THE COMPLAINANT.

MR. HERMAN G. BODEWES, ATTORNEY AT LAW, APPEARED ON BEHALF OF RESPONDENT MERLE BUERKETT.

MR. CRAIG RANDALL, LONDRIGAN AND POTTER, APPEARED ON BEHALF OF RESPONDENTS BUNN PARK INDUSTRIES, INC., ESTATE OF MAX RISEMAN, DECEASED, MONIKA U.M. WEINER AND RICHARD WEINER.

MR. THOMAS FLATTERY APPEARED PRO SE.

OPINION AND ORDER OF THE BOARD (by N.E. Werner):

This matter comes before the Board on the November 12, 1981 Complaint brought by the Illinois Environmental Protection Agency ("Agency"). A hearing was held on March 3, 1982 which primarily resolved various legal complexities resulting from the Agency's initial action against the wrong party (i.e., Strata, Inc., a dissolved corporation). Accordingly, an Amended Complaint was filed on April 20, 1982. On April 26, 1982, Respondent Thomas Flattery requested to be dismissed as a party respondent in this action. On May 27, 1982, the Board entered an Order denying Respondent Flattery's motion. A hearing was held on August 4, 1982. The parties filed a Stipulation and Proposal for Settlement on August 9, 1982.

Respondent Bunn Park Industries, Inc., a dissolved Illinois corporation, was involuntarily dissolved on December 1, 1978 by the Illinois Secretary of State for failure to pay an annual franchise tax and failure to file an annual report. Shareholders in Bunn Park Industries, Inc. included Respondents Estate of Max Riseman, deceased, Monika U.M. Weiner (as legatee of Irwin Weiner, deceased), Richard Weiner, Thomas P. Flattery, Ernie L. Schmidt, and unknown persons designated as John Doe and Jane Roe ("Bunn Park Industries Shareholders").

Respondents Ed Evans, John Holtman, Clarence "Bud" Garner and Nancy DiMartino ("Land Trust Owners") are the four sole shareholders of Capital City Land, Inc. and are also the beneficial owners of a land trust, Number 240, which is held by the Town and Country Bank of Springfield, Trustee ("Bank"), an Illinois bank.

It is stipulated that, from September 1, 1973 until August 31, 1974, Respondent Merle Buerkett ("Buerkett") operated, pursuant to a 1-year lease made by Respondent Bunn Park Industries, Inc., a sanitary landfill on a 16-acre tract of land located to the east of Bunn Park near Fox Bridge Road in Springfield, Sangamon County, Illinois. (Stip. 3). Buerkett indicated that he did not deposit refuse on the property after August 31, 1974 and asserted that he performed some final covering operations on the 16-acre tract during the time period from September 1, 1974 until January, 1975. (Stip. 3-4). The Agency noted that, on one or more occasions after August 31, 1974, Buerkett signed inspection reports which indicated that he was the owner and operator of the property. (Stip. 4). The Board notes that Respondent Buerkett has previously been before the Board for improper landfill operations on leased property as early as 1971. EPA v. Clay Products, Merle Buerkett, et al., PCB 71-41, June 23, 1971 (See: Dissenting Opinion of J.D. Dumelle in PCB 71-41); E.P.A. v. Merle Buerkett and Harold Cline, PCB 77-294, 30 PCB 109 (April 27, 1978); (Also see: Order in PCB 77-294 dated June 8, 1978 at 30 PCB 395).

The parties have also stipulated that, from September, 1974 until January, 1975, Respondents Bunn Park Industries, Inc. and Bunn Park Industries Shareholders "caused or allowed the consolidation of refuse from one or more sources at the said 16-acre tract as a central disposal site". (Stip. 3-4). On November 18, 1974, the Agency issued an Operating Permit to Bunn Park Industries, Inc. for a solid waste disposal site on a 49-acre tract "in the North half of the Northwest Quarter of Section 11, and the South half of the Southwest Quarter of Section 2, Township 15 North, Range 5, West of the Third Principal Meridian in Springfield, Sangamon County, Illinois (hereinafter "site")". (Stip. 4). The Operating Permit authorized the handling of demolition and construction waste, as well as other non-putrescible refuse, thereby "excluding garbage and liquid waste unless otherwise specified by supplemental permit". (Stip. 4).

On February 18, 1977, Respondents Bunn Park Industries, Inc. and Bunn Park Industries Shareholders sold the 49-acre site to Respondent Capital City Land, Inc. and to Respondents Land Trust Owners, who placed their interest in the property into Land Trust Number 240, held by Respondent Bank. (Stip. 4).

Insufficient depth of final cover material was placed on various portions of the site during the time period from January 2, 1975 until mid-1980 in violation of Rules 301 and 305(c) of Chapter 7: Solid Waste Regulations ("Chapter 7") and Section 21(b) of the Illinois Environmental Protection Act ("Act"), as it was in effect prior to January 1, 1980. (Stip. 4-5). A subsequent Agency inspection of the site on April 22, 1982 revealed that the requisite final cover had been placed on the property. (Stip. 5). On May 20, 1982, the Agency notified Respondent Ed Evans in writing that the site was properly closed and that the appropriate final cover had been applied. (Stip. 5). However, the parties have noted that, should settling problems occur, the Agency "is not estopped from seeking that additional cover be placed on the site." (Stip. 5).

The Agency states that: (1) leachate was ponded on the property and flowed into a small tributary of Sugar Creek on October 20, 1975; June 30, 1976; July 16, 1976; April 12, 1977; May 11, 1977; August 31, 1977; June 8, 1978; and April 17, 1979; (2) inadequate measures were taken to control leachate (although the problems now have been "fully corrected"); (3) because of damage to a monitoring well, no water sample analysis results were submitted to the Agency from April 1, 1979 until April 20, 1982, although such sampling results were regularly submitted prior to April 1, 1979; (4) no Respondent made any effort to replace or repair the damaged monitoring well prior to April 20, 1982; (5) a monitoring well was installed on the landfill site on May 10, 1982 in compliance with Agency specifications; and (6) the failure to take adequate measures to monitor leachate were in violation of Rules 301 and 314(e) of Chapter 7 and Section 21(b) of the Act (as it was in effect prior to January 1, 1980) and Section 21(a) of the Act (as it went into effect January 1, 1980). (Stip. 5-7).

Respondents Capital City Land, Inc., Land Trust Owners, and Bank state that responsibility for the violations alleged in Counts I through IV of the Amended Complaint is partially within the purview of Respondents Bunn Park Industries, Inc. and Bunn Park Industries Shareholders because the contract for purchase of the landfill in 1977 by Respondents Capital City Land, Inc. and Land Trust Owners "spelled out that final cover, leachate control and leachate monitoring well requirements would be taken care of by sellers, Respondent Bunn Park Industries, Inc." (Stip. 7). The Agency has requested that the Board dismiss Count V of the Amended Complaint and dismiss Respondents Thomas Flattery, Ernie L. Schmidt, John Doe and Jane Roe from the proceeding. (Stip. 7).

The proposed settlement agreement provides that: (1) Respondents Bunn Park Industries, Inc., Bunn Park Industries Shareholders (with the exception of Thomas Flattery, Ernie L. Schmidt, John Doe and Jane Roe), Capital City Land, Inc., Land Trust Owners, Buerkett and Bank have violated Rules 301, 305(c) and 314(e) of Chapter 7 and Section 21(b) of the Act (as it was in effect prior to January 1, 1980) and Section 21(a) of the Act (as it went into effect on January 1, 1980); (2) Respondents Capital City Land, Inc., Land Trust Owners and Bank agree to comply with the requirements of Rule 318 of Chapter 7 and "assert that they took expeditious steps to remedy the leachate and final cover problems with the landfill upon their obtaining the landfill property in February, 1977"; and (3) a stipulated penalty of \$3,000.00 shall be assessed against Respondents Bunn Park Industries, Inc., Bunn Park Industries Shareholders (with the exception of Thomas Flattery, Ernie L. Schmidt, John Doe and Jane Roe), Capital City Land, Inc., Land Trust Owners, and Bank. (Stip. 8-10).

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 Procedural Rule 331. The Board will dismiss Count V of the Amended Complaint and dismiss Respondents Thomas Flattery, Ernie L. Schmidt, John Doe and Jane Roe from this action. The Board finds that Respondents Bunn Park Industries, Inc., Bunn Park Industries Shareholders (with the exception of Thomas Flattery, Ernie L. Schmidt, John Doe and Jane Roe), Capital City Land, Inc., Land Trust Owners, Merle Buerkett, and Bank have violated Rules 301, 305(c), and 314(e) of Chapter 7 and Section 21(b) of the Act (as it was in effect prior to January 1, 1980) and Section 21(a) of the Act (as it went into effect on January 1, 1980). A stipulated penalty of \$3,000.00 shall be assessed against the appropriate Respondents.

This Opinion constitutes the Board's finding of fact and conclusion of law in this matter.

ORDER

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

1. The Respondents, Capital City Land, Inc., Merle Buerkett, Town and Country Bank of Springfield, Trustee, Bunn Park Industries, Inc., Estate of Max Riseman, deceased, Monika U.M. Weiner, Richard Weiner, Ed Evans, John Holtman, Clarence "Bud" Garner and Nancy DiMartino, have violated Rules 301, 305(c) and 314(e) of Chapter 7: Solid Waste Regulations and Section 21(b) of the Illinois Environmental Protection Act (as it was in effect prior to January 1, 1980) and Section 21(a) of the Act (as it went into effect on January 1, 1980).

2. Within 30 days of the date of this Order, the Respondents shall, by certified check or money order payable to the State of Illinois, pay the stipulated penalty of \$3,000.00, for which they shall be jointly and severally liable, to:

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

3. Count V of the Amended Complaint is hereby dismissed.


4. Respondents Thomas Flattery, Ernie L. Schmidt, John Doe, and Jane Roe are hereby dismissed as Respondents in this proceeding.

5. The Respondents shall comply with all the terms and conditions of the Stipulation and Proposal for Settlement filed on August 9, 1982, which is incorporated by reference as if fully set forth herein.

IT IS SO ORDERED.

Chairman Dumelle and Mr. Anderson concur.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order were adopted on the 15th day of September, 1982 by a vote of 5-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board