

ILLINOIS POLLUTION CONTROL BOARD
July 21, 1982

ILLINOIS ENVIRONMENTAL PROTECTION)
AGENCY,)
)
Complainant,)
)
v.) PCB 80-232 and
) PCB 80-233 (Consolidated)
)
WASTEX RESEARCH, INC.,)
an Illinois Corporation,)
JACK CHASE, and ROY BAUR, JR.,)
d/b/a/ BAUR TRUCKING,)
)
Respondents.)

CHRISTINE ZEMAN, ASSISTANT ATTORNEY GENERAL, APPEARED ON BEHALF OF THE COMPLAINANT.

THOMAS J. IMMEL, ATTORNEY AT LAW, APPEARED ON BEHALF OF RESPONDENT WASTEX RESEARCH, INC.

JACK CHASE APPEARED PRO SE.

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

This matter comes before the Board on the December 23, 1980 Complaints in PCB 80-232 and PCB 80-233 brought by the Illinois Environmental Protection Agency ("Agency") against Respondents Wastex Research, Inc. ("Wastex"), Jack Chase ("Chase") and Roy Baur, Jr., d/b/a Baur Trucking ("Baur"). On May 8, 1981, the Agency filed a Motion to Amend the Complaint and an Amended Complaint in both cases. On May 12, 1981, the Hearing Officer entered orders granting the Agency leave to amend both Complaints. On February 19, 1982, the Agency filed a motion to consolidate PCB 80-232 and PCB 80-233. On March 4, 1982, the Board entered an Order which consolidated these two enforcement actions. On March 29, 1982, a hearing was held. On April 6, 1982, two separate Stipulations between Baur and the Agency were filed pertaining to PCB 80-232 and PCB 80-233. Similarly, on April 6, 1982, two separate Stipulations between Chase and the Agency were filed. On May 7, 1982, two separate Stipulations between Wastex and the Agency were filed relating to PCB 80-232 and PCB 80-233. Thus, there are a total of six separate Stipulations involved in this proceeding. For convenience, the Stipulations involving Baur will be referred to as "Baur Stip.#232" and "Baur Stip.#233"; the Stipulations between Chase and the Agency will be called "Chase Stip.#232" and Chase Stip.#233"; and the Stipulations concerning Wastex will be designated "Wastex Stip.#232" and "Wastex Stip.#233."

Wastex Research, Inc. operated facilities at 301 S. 15th Street ("15th Street facility") and at 2000 E. Broadway ("Broadway Facility") in East St. Louis, St. Clair County, Illinois for the storage and occasional recycling of wastes. The 15th Street facility, which is now closed, was in operation during the time periods relevant to the Amended Complaints.

Mr. Jack Chase owned Wastex from its incorporation on October 3, 1979 until its sale on March 1, 1981 to Mr. James Markel (who took over possession and management of Wastex). From October 3, 1979 until at least December 31, 1980, Chase was employed as business manager of Wastex; determined which waste products would be accepted by Wastex and what would be done with them; and although not a corporate officer, "held himself out as Wastex Research, Inc. and acted on behalf of and within the scope of his employment" for the firm. (Chase Stip. #233, p.2-3). As business manager of Wastex, Chase had operational responsibility for both the 15th Street facility and the Broadway facility.

Mr. Roy Baur, Jr., d/b/a Baur Trucking (and occasionally d/b/a Baur Equipment), owns and operates a hauling firm which is based in Cahokia, St. Clair County, Illinois.

Count I of the Amended Complaint in PCB 80-232 alleged that, sometime between October 3, 1979 and January 1, 1980, Wastex and Chase delivered, at the 15th Street facility, between 200 to 300 drums containing a heavy sludge waste product (i.e., a moderately toxic hazardous chemical waste known as "Kolene") to Baur for disposal at a 1 acre open dump site in Clinton County, Illinois about 1½ miles east of Germantown, just south of Route 161 (i.e., on property owned by Mr. Ebbie Colston). Baur allegedly transported the drums of sludge to the Colston open dump site and buried the drums on that property. By disposing of refuse at an unpermitted site and thereby conducting refuse disposal operations without a permit, Baur allegedly violated Sections 21(e) and 21(f) of the Illinois Environmental Protection Act ("Act"). Similarly, Wastex, Chase, and Baur allegedly caused or allowed the use or operation of a solid waste management site without an Agency permit in violation of Rule 202(a) of Chapter 7: Solid Waste Regulations ("Chapter 7") and allowed open dumping of refuse in violation of Section 21(b) of the Act. On August 7, 1980, at the suggestion of the Agency, Wastex and Chase excavated the Kolene drums from the dump site and transported the sludge drums to the Broadway facility where they are now stored.

Count II alleged that, because none of the Respondents had ever been issued a permit by the Agency authorizing acceptance of hazardous wastes, liquid wastes, or sludges at the open dump site, Wastex, Chase, and Baur allowed the operation of a sanitary landfill which fails to meet each requirement of Part III of Chapter 7 and allowed the open dumping of refuse other than garbage at the open dump site in violation of Rule 301 of Chapter 7 and Section 21(b) of the Act. Additionally, Baur allegedly accepted sludge for its disposal at the open dump site without a supplemental permit from the Agency in violation of Rule 310(b) of Chapter 7.

Count III alleged that Wastex and Chase violated Rules 301, 302(B), 501(A) and 501(B) of Chapter 9: Special Waste Hauling Regulations ("Chapter 9") by delivering a special waste, unaccompanied by the necessary manifest, to unlicensed hauler Baur without having any supplemental Agency permit designating anyone to dispose of, or transport, the Kolene to a specified site. Baur allegedly violated Rules 201 and 501(B) of Chapter 9 by transporting this special waste without a permit and by failing to acknowledge the receipt of the special waste by signing an appropriate manifest which should have accompanied the Kolene to an authorized destination.

Count I of the Amended Complaint in PCB 80-233 alleged that, from October 3, 1979 until April, 1980, Wastex and Chase delivered, without the necessary accompanying manifests, industrial process waste in barrels to unlicensed hauler Baur at Wastex's 15th Street facility for transport, storage, treatment, and disposal at various sites within Illinois in violation of Rule 301 of Chapter 9. Baur allegedly hauled these special wastes without the requisite Agency permit in violation of Rule 201 of Chapter 9.

Count II alleged that, on various specified occasions between October 3, 1979 and May 8, 1981, Wastex and Chase accepted industrial process wastes from Baur without signing the requisite manifests in violation of Rule 501(B) of Chapter 9.

Count III alleged that, intermittently from October 3, 1979 until May 8, 1981, Wastex and Chase accepted special process waste at their facilities whose manifests designated other sites as the proper destination in violation of Rules 302(A) and 501(C) of Chapter 9.

Count IV alleged that, on certain enumerated dates, Wastex and Chase accepted special wastes which were delivered without any manifests in violation of Rule 302(A) of Chapter 9.

Count V alleged that, from March 1, 1980 through April 30, 1980, Wastex and Chase allowed special wastes to be transported from the 15th Street facility to the Broadway facility without the appropriate manifests in violation of Rule 501(C) of Chapter 9.

Count VI alleged that, on certain specified occasions, Wastex and Chase accepted excessive amounts of special wastes such as printing wash-up, paint pigments, paint sludge and solvents in quantities which violated conditions of the special waste permits issued by the Agency in violation of Rules 201 and 302 of Chapter 7: Solid Waste Regulations.

The Stipulation between Baur and the Agency in PCB 80-232 provided that: (1) pursuant to an oral agreement between Baur and Chase for services and equipment rental during the time period between October 1, 1979 and January 1, 1980, Baur rented a high lift and trucks to Chase whenever Chase requested or needed this equipment; (2) Baur, who utilized various employees to help him,

operated the high lift for Chase and was paid on an hourly basis for this service and also drove trucks for Chase's waste disposal operations and was paid \$250.00 per load for the use of his trucks; (3) the Kolene, a moderately toxic solid industrial process waste, was initially received by Chase from the Ford Motor Company's assembly plant in Kansas City where it was used to "wash down" paint pigments on Ford's assembly line; (4) Baur admittedly accepted the 200 to 300 drums of Kolene from Chase and transported them to the Colston open dump site where they were buried; (5) when Chase excavated the Kolene drums on August 7, 1980 at the suggestion of the Agency and transported these sludge drums to Wastex's Broadway facility, Baur lent no help to Chase in this project (although Chase requested Baur's aid in the excavation); (6) Baur and Chase terminated their oral agreement "shortly after the Germantown incident"; (7) Baur admits the violations alleged in the Amended Complaint in PCB 80-232 and has admittedly violated Rules 202(a), 301, and 310(b) of Chapter 7; Rules 201 and 501(B) of Chapter 9; and Sections 21(b), 21(e) and 21(f) of the Act; (8) Baur agrees to cease and desist from further violations; (9) Baur agrees, for a period of 5 years, not to work for, or contract with, Jack Chase (or any business entity in which Chase is a corporate officer or employee) pertaining to the transport by Baur of any "special waste"; and (10) Baur agrees to pay a stipulated penalty of \$1,000.00. (Baur Stip.#232, p.2-3).

The Stipulation between Baur and the Agency in PCB 80-233 indicates that: (1) Baur and his employees, intermittently between October 3, 1979 and April, 1980, accepted various types of industrial process waste in barrels from Wastex and Chase, without the requisite accompanying manifests, at the 15th Street facility and, although not having the necessary waste hauling permit from the Agency, transported and hauled this waste for disposal within Illinois; (2) during such disposal operations, Baur sometimes crushed barrels still containing special wastes, loaded these barrels into his trucks, covered the barrels with refuse, and disposed of these special wastes at landfills in St. Clair County which were not authorized by supplemental Agency permits to accept such wastes; (3) Baur and Chase have terminated their oral agreement for services and equipment rental; (4) Baur admittedly transported special waste without the appropriate Agency permit in violation of Rule 201 of Chapter 9; (5) Baur agrees to cease and desist from further violations; (6) Baur agrees to not work for, or contract with, Chase for the transport of special wastes for a 5 year period; and (7) Baur agrees to pay a stipulated penalty of \$500.00. (Baur Stip.#233, p.1-5).

The Stipulation between Chase and the Agency in PCB 80-232 states that: (1) Chase, who paid Baur about \$3,000.00 for the transport and disposal of the Kolene drums, asserts that he "assumed" that Baur would properly dispose of the Kolene, but admittedly failed to ascertain where Baur took the sludge drums "until notified by the Agency or media in August of 1980 that his drums were found dumped at the Colston open dump site"; (2) on

August 7, 1980, Chase, at the suggestion of the Agency, dug up the Kolene barrels from the Colston property and transported these drums to Wastex's Broadway facility where they are presently stored; (3) Chase sold Wastex to James Markel on March 1, 1981; (4) Chase admits violations of Rules 202(a) and 301 of Chapter 7; Rules 301, 302(B), 501(A), and 501(B) of Chapter 9; and Section 21(b) of the Act; (5) Chase agrees to cease and desist from further violations; and (6) Chase agrees to pay a stipulated penalty of \$1,500.00 in three installments of \$500.00 every 60 days, the first installment to begin 180 days after the date of the Board Order in this case. (Chase Stip.#232, p.1-8).

The Stipulation between Chase and the Agency in PCB 80-233 notes that: (1) Chase asserts that, in October or November of 1979, he "delegated the scheduling and paperwork duties associated with manifests and special waste hauling permits to a corporate officer of Wastex Research, Inc. and that both met with Agency personnel for almost half a day to better learn the details of their responsibilities and requirements" under Chapter 9; (2) the Agency assigned both the 15th Street facility and the Broadway facility the same identification number (i.e., site #16304531) "for purposes of completing manifests used in connection with the transportation and delivery of special waste to the two facilities"; (3) Chase asserts that the lack of compliance with manifest requirements was due to "oversights on the part of the employee and corporate officer of Wastex Research, Inc. who was delegated the duty to oversee such matters"; (4) Chase admits violations of Rules 301, 302(A), and 501(B) of Chapter 9 and Rules 210 and 302 of Chapter 7; (5) Chase admits violating Rule 501(C) of Chapter 9 by accepting special process wastes at the 15th Street and Broadway facilities whose manifests designated other sites as the proper destination, but contends that it did not violate Rule 501(C) of Chapter 9 pertaining to the transfer of wastes from the 15th Street facility to the Broadway facility without a manifest (i.e., Chase denies that it has any liability pertaining to the allegations in Count V of the Amended Complaint in PCB 80-233; while the Agency contends that Chase has liability under Rule 501(C) of Chapter 9 even though the two facilities have the same site number); (6) Chase agrees to cease and desist from further violations; and (7) Chase agrees to pay a stipulated penalty of \$1,000.00 in two installments of \$500.00, the first installment to be paid with 60 days of the date of the Board's Order and the second installment to be paid within 120 days of the date of the Board's Order in this case. (Chase Stip.#233, p.1-15).

The Stipulation between Wastex and the Agency in PCB 80-232 indicates that: (1) Wastex asserts that it has "no direct knowledge of the transaction, but admits that the delivery of the 200 to 300 Kolene drums by Chase to Baur might or could have occurred";

(2) Wastex asserts that it also has "no direct knowledge" of the transportation and burial of the Kolene drums by Baur, but admits that such actions may have, in fact, occurred; (3) Wastex admits that "it has no copy or record of manifests showing the delivery of 200 to 300 Kolene drums from its 15th Street facility to Baur for disposal at the Colston open dump site between October 3, 1979 and January 1, 1980", but states that it has "no direct knowledge of the transaction between Chase and Baur" or the subsequent chain of events; (4) Wastex, by the conduct of Chase on the firm's behalf, has allowed the operation of a landfill without the necessary permit, allowed the open dumping of refuse, and failed to have the requisite supplemental permit from the Agency; (5) Wastex admits the violations alleged in Counts I, II, and III of the Amended Complaint in PCB 80-232 and agrees to cease and desist from further violations; (6) Wastex agrees to pay a stipulated penalty of \$1,500.00. (Wastex Stip.#232, p.1-7).

The Stipulation between Wastex and the Agency in PCB 80-233 provides that: (1) Wastex admits violating Counts I through IV of the Amended Complaint, but denies that its actions violated Rule 501(C) of Chapter 9 or Rules 210 and 302 of Chapter 7 as alleged in Counts V and VI of the Amended Complaint; (2) Wastex agrees to cease and desist from further violations; and (3) Wastex agrees to pay a stipulated penalty of \$1,000.00. (Wastex Stip.#233, p.1-17; Ex.A & B).

In reference to the disputed violations in Count V of the Amended Complaint in PCB 80-233, Wastex argues that when its employees moved waste material from the 15th Street facility to the nearby (i.e., less than one mile away) Broadway facility, no manifest was required for the movement of such "inventory" material between adjoining facilities having the same Agency identification number. Moreover, Wastex asserts that the Agency is estopped from alleging any such violation, since the Agency renewed supplemental and other permits without ever notifying Wastex that such "inventory" movements constitute violations if no manifests are first obtained. On the other hand, the Agency argues that, even if facilities only have one identification number, where special waste is put back into the transportation mainstream on a public street and then goes to a separate facility or site nearby, a manifest is required for shipment for even five blocks (even where the same owner is involved). Concurrently, the Agency argues that even if the Board accepts Wastex's legal position on the transfer of special wastes between two nearby facilities, the Board should limit its holding to the fact situation where the Agency has assigned only one number to two facilities, but not to those cases where there are two separate facilities having two separate identification numbers. (R. 18-41).

In evaluating the respective arguments of the parties on this legal issue, the Board, while rejecting Wastex's estoppel contention as self-serving and legally unfounded, hereby holds that no manifest is required for interfacility movement of special wastes between two nearby facilities having one Agency identification number. (See: The Eureka Company v. EPA, PCB 79-117, Opinion and Order dated September 6, 1979.) Accordingly, the movement of waste material from the 15th Street facility to the nearby Broadway facility without a manifest did not violate Rule 501(C) of Chapter 9. However, both Wastex and Chase have admittedly violated Rule 501(C) of Chapter 9 by accepting special process wastes at the 15th Street and Broadway facilities whose manifests designated other sites as the proper destination.

In reference to the disputed violations in Count VI of the Amended Complaint in PCB 80-233, Wastex contends that:

"...the figure reported on the green application form by an applicant for 'total annual waste volume' does not become a condition of that special waste permit. Neither the application nor the instructions for the Special Waste Disposal permit states anywhere that the applicant's response to 'total annual waste volume' becomes a condition of that special waste permit...the information has relevance only to facilities which dispose of wastes (i.e., landfills) and not to facilities which process or reclaim wastes." (Wastex Stip.#233, p.14).

On the other hand, the Agency argues that:

"...the figure reported on the green application form by an applicant for 'total annual waste volume' is a condition of that special waste permit. At the time of the occurrences in this case, the green sheet application, when approved by the EPA, was signed and sent back to the applicant as the special waste permit. A cover letter specifying the terms of the permit is now sent to each permittee. The Agency receives between 50 and 200 requests monthly to extend or alter the total annual waste volume of a special waste permit as originally reported on the green application form, evidence that others deem the volume figure a 'condition' with which it must abide. In addition, the Agency's manifest computer is programmed to flag those manifests whose volumes exceed the volume reported on the green sheet. The total volume figures serve to inform the Agency and others of the total volume of waste that may arrive at a site during the life of the green sheet permit." (Wastex Stip.#233, p.14-15).

In the instant case, there appears to be no factual question that Wastex accepted amounts of special wastes such as printing ink, paint pigments, paint sludge and solvents in quantities which exceeded the "total annual waste volume" figures originally delineated in the special waste disposal application forms. However, the Board believes that Wastex's contentions pertaining to the disputed violations in Count VI of the Amended Complaint in PCB 80-233 have merit in that: (1) the throughput figures for a waste processor may be inherently inexact and (2) ambiguity (subsequently rectified by a cover letter now being sent by the Agency) formerly existed in that processors might not initially realize that the "total annual waste volume" figure they inserted on their green sheet was not merely an estimate, but instead would be construed by the Agency as a limit. While it might be argued that, in the present case, Mr. Jack Chase owned and operated Wastex and could perhaps be presumed to have the requisite familiarity with Agency forms since he has been involved in such matters before, the Board will, in this case, accept Wastex's argument as being reasonable and hereby finds that Wastex has not violated Rules 210 and 302 of Chapter 7. (See: EPA v. Jack Chase, d/b/a/ Abcoa Thinners, and Michael Chase, PCB 79-19, Opinion and Order dated July 12, 1979.)

In evaluating the consolidated enforcement actions and the six proposed settlement agreements, 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. The Board finds all six settlement agreements acceptable under Procedural Rule 331 and Section 33(c) of the Act. The Respondents will be ordered to follow the provisions of their respective proposed settlement agreements and to pay the appropriate stipulated penalties.

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 Wastex Research, Inc. has violated Rules 202(a), and 301 of Chapter 7: Solid Waste Regulations; Rules 301, 302(A), 302(B), 501(B), and 501(C) of Chapter 9: Special Waste Hauling Regulations; and Section 21(b) of the Illinois Environmental Protection Act.
2. Wastex Research, Inc. shall cease and desist from further violations.
3. Within 60 days of the date of this Order, Respondent Wastex Research, Inc. shall, by certified check or money order payable to the State of Illinois, pay the stipulated penalties

of \$1,500.00 (for violations in PCB 80-232) and \$1,000.00 (for violations in PCB 80-233) which are to be sent to:

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

4. Respondent Jack Chase has violated Rules 202(a), 210, 301, and 302 of Chapter 7: Solid Waste Regulations; Rules 301, 302(A), 302(B), 501(A), 501(B), and 501(C), of Chapter 9: Special Waste Hauling Regulations; and Section 21(b) of the Illinois Environmental Protection Act.

5. Respondent Jack Chase shall pay a stipulated penalty of \$1,500.00 (for violations in PCB 80-232) in three installments of \$500.00 every 60 days, the first installment to begin 180 days after the date of this Order.

6. Respondent Jack Chase shall pay a stipulated penalty of \$1,000.00 (for violations in PCB 80-233) in two installments of \$500.00, the first installment to be paid within 60 days of the date of this Order and the second installment shall be paid within 120 days of the date of this Order.

7. All penalty payments by Jack Chase shall be by certified check or money order payable to the State of Illinois and are to be sent to the Illinois Environmental Protection Agency, Fiscal Services Division, 2200 Churchill Road, Springfield, Illinois 62706.

8. Jack Chase shall cease and desist from further violations.

9. Respondent Roy Baur, Jr., d/b/a Baur Trucking, has violated Rules 202(a), 301, and 310(b) of Chapter 7: Solid Waste Regulations; Rules 201 and 501(B) of Chapter 9: Special Waste Hauling Regulations; and Sections 21(b), 21(e), and 21(f) of the Illinois Environmental Protection Act.

10. Respondent Baur shall cease and desist from all further violations.

11. Respondent Baur shall not, for a period of 5 years from the date of this Order, work for, or contract with, Jack Chase (or any business entity in which Chase is a corporate officer or employee) for the transport by Baur of any "special waste."

12. Within 60 days of the date of this Order, Respondent Roy Baur, Jr., d/b/a Baur Trucking, shall, by certified check or money order payable to the State of Illinois, pay the stipulated penalties of \$1,000.00 (for violations in PCB 80-232) and \$500.00 (for violations in PCB 80-233) which are to be sent to the Illinois Environmental Protection Agency, Fiscal Services Division, 2200 Churchill Road, Springfield, Illinois 62706.

13. Each Respondent shall comply with all the terms and conditions of the applicable Stipulations and Proposals for Settlement which were filed on April 6, 1982 and May 7, 1982, which are incorporated by reference as if fully set forth herein.

IT IS SO ORDERED.

D. Anderson and J. 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 21st day of July, 1982 by a vote of 5-0.

Christan L. Moffett, Clerk
Christan L. Moffett, Clerk
Illinois Pollution Control Board