

ILLINOIS POLLUTION CONTROL BOARD
April 27, 1978

ENVIRONMENTAL PROTECTION AGENCY,)
)
 Complainant,)
)
 v.) PCB 77-294
)
 MERLE BUERKETT AND HAROLD CLINE,)
)
 Respondents.)

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

This matter comes before the Board on a November 10, 1977 Complaint alleging failure to apply final cover at a solid waste management site in violation of Rules 301 and 305(c) of Chapter 7: Solid Waste Rules and Regulations and Section 21(b) of the Act. Because active use of the site terminated in 1970, the Complaint also alleges a violation of Rule 5.07 (b) of the Department of Public Health Rules and Regulations for Refuse Disposal Sites and Facilities and therefore Section 49(c) of the Act.

The site in question is located on approximately 20 acres in an unincorporated area of Sangamon County near Springfield. The site is southwest of the Sangamon River and across from Carpenter Park; Sugar Creek flows by the southwestern boundary of the site.

The site was operated as a refuse disposal facility from approximately 1967 to 1970 by Respondent Buerkett. An agency inspection on August 4, 1971 showed that the site was not operating, that one of two entrances to the property had been closed, and that 10 to 15 acres had been used to dispose of concrete, wood ties, and miscellaneous articles. Several abandoned cars and trucks were also on the site. The operator of the site did not secure an Agency permit or a Department of Public Health permit prior to operating the site.

A disproportionate part of the record was devoted to consideration of the ownership of the site. This consideration was complicated by the fact that a circle drawn on the plat sheet included territory greater than the landfill site. The Board, after considering the evidence, concludes that a substantial portion, if not all, of the site was owned by Respondent

Cline during the period of active operation. Respondent Cline admitted he owned the site by giving an oral description of the property to Agency representatives. He accompanied Agency representatives on their inspections of June 1, 1973, June 26, 1973 and July 12, 1973 and admitted on June 1, 1973 to Agency representatives that he had allowed dumping at the site by persons other than Buerkett. Though mindful of the hearsay aspects of this evidence, the Board feels that it has been satisfactorily established that Cline was the owner of the disposal site.

Agency representatives made inspections during 1971 on August 4th and 8th, during 1972 on July 6th and 10th, and repeatedly during 1973. On July 12, 1973 Cline was informed of the cover requirements and a July 17, 1973 inspection shows that some cover had been placed on the northern part of the property. At a March 14, 1974 inspection, it appeared that more fill had been placed and compacted on the north side of the property and some cover had been placed in the southeastern section. At an August 16, 1975 meeting with Buerkett, he admitted to Agency representatives that he had done some filling. An August 23, 1975 inspection shows that a double wide trailer had been placed on the southwest area of the site; an August 2, 1976 inspection showed that a second trailer had been moved to the West central portion of the site. The record shows that residents of one of these trailers purchased a portion of the landfill site requiring cover.

It appears from the record that while some of the area has been covered, no area on the site has a full two feet of compacted cover and one area has no cover. Soil borings conducted by the Agency on August 2, 1976 and August 3, 1977 show samples ranging from no cover to approximately one and a half feet of cover. The record shows that there is some cover material at the site but it is probably not adequate to meet the requirements of Rule 5.07(b).

The Board finds that the failure of Respondents to apply final cover is in clear violation of Rule 5.07(b) of the Department of Public Health rules. The responsibility for compliance with the regulations applies to both the owner of the landfill site and the operator. In considering a penalty for this violation of the Act, the Board concludes that a \$500 fine to be paid jointly and severally by the Respondents is reasonable since no mitigating factors have been presented by them to excuse the undue delay in complying with final cover regulations. The Board also orders that Respondents finish installation of final cover within 120 days of the date of this Order.

In determining whether Respondents have also violated Section 21(b) of the Act, a violation of a regulation adopted by the Board must be plead and proven. Since Rule 305(c) was adopted by the Board after Respondents ceased operation, no violation of that Rule can be found. Since Rule 507(b) was never adopted by the Board, a violation of that rule cannot constitute a violation of Section 21(b) of the Act. Respondents' conduct is actionable through the saving clause in Section 49(c) of the Act.

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

ORDER

It is the Order of the Pollution Control Board that:

- 1) Respondents Merle Buerkett and Harold Cline are found to have violated Rule 507(b) of the Department of Public Health Rules and Regulations for Refuse Disposal Sites and Facilities for failure to apply final cover to a solid waste management site owned by Cline and operated by Buerkett from the period six months after terminating operations until July 27, 1974.
- 2) Respondents shall pay as a penalty the sum of \$250. each, payment to be made within 45 days of the date of this order, by certified check or money order to:

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

- 3) Respondent Merle Buerkett shall apply final cover pursuant to Rule 5.07(b) within 120 days of the adoption of this order, and shall post a performance bond of \$7500 to assure correction of the violation within the time prescribed.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 27th day of April, 1978 by a vote of 5-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board