

ILLINOIS POLLUTION CONTROL BOARD
March 24, 1983

ILLINOIS ENVIRONMENTAL PROTECTION)
AGENCY,)
)
Complainant,)
)
v.) PCB 81-102
)
CLAUDE BURCH AND CLIFFORD BURCH,)
)
Respondents.)

GWENDOLYN W. KLINGLER, ASSISTANT ATTORNEY GENERAL, APPEARED ON BEHALF OF THE COMPLAINANT.

T. JEANNINE GARRETT, ATTORNEY AT LAW, APPEARED ON BEHALF OF RESPONDENT CLIFFORD BURCH.

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

This matter comes before the Board on the June 17, 1981 Complaint brought by the Illinois Environmental Protection Agency ("Agency"). On August 7, 1981, the Agency filed a Motion to Amend the Complaint in order to add Clifford Burch as a party to the enforcement action. On August 31, 1981, the Hearing Officer entered an order granting the Agency's motion and an Amended Complaint was filed on September 3, 1981.

Count I of the Amended Complaint alleged that the Respondents, from October 18, 1977 until September 3, 1981, improperly conducted refuse disposal operations on land located about 4 miles southwest of Arcola, Illinois near the Kaskaskia River in Douglas County, Illinois (the "site") without the requisite Operating Permit from the Agency in violation of Rule 202(a) of Chapter 7: Solid Waste Regulations ("Chapter 7") and Section 21(d) [formerly Section 21(e)] of the Illinois Environmental Protection Act ("Act").

Count II alleged that, from October 18, 1977 until June 1, 1979, the Respondents improperly unloaded refuse at the site without placing the refuse into the toe of the fill or into the bottom of the trench in violation of Rules 301 and 303(a) of Chapter 7 and Section 21(b) of the Act.

Count III alleged that, from October 18, 1977 until June 1, 1979, the Respondents improperly compacted and spread refuse at the site in violation of Rules 301 and 303(b) of Chapter 7 and Section 21(b) of the Act.

Count IV alleged that, from October 18, 1977 until June 1, 1979, the Respondents failed to place the appropriate daily cover on the site in violation of Rules 301 and 305(a) of Chapter 7 and Section 21(b) of the Act.

Count V alleged that, from February 24, 1978 until June 1, 1979, the Respondents failed to place the proper intermediate cover on the site in violation of Rules 301 and 305(b) of Chapter 7 and Section 21(b) of the Act.

Count VI alleged that, from February 24, 1978 until September 3, 1981, the Respondents failed to place the requisite final cover over portions of the site in violation of Rules 301 and 305(c) of Chapter 7 and Section 21(b) of the Act.

Count VII alleged that, on October 18, 1977, the Respondents allowed open burning at the site in violation of Rules 301 and 311 of Chapter 7 and Section 21(b) [now Section 21(a)] of the Act.

A hearing was held on January 24, 1983. The parties filed a Stipulation and Proposal for Settlement on February 4, 1983.

From October 15, 1979 until October 31, 1980, Respondent Claude Burch and his brother Clifford Burch each held a one-half ownership interest as tenants-in-common to the property in question. Claude Burch subsequently sold his interest in the site to his brother and Respondent Clifford Burch and Audrey Burch held the property as joint tenants from November 1, 1980 until June 5, 1982 when the site was sold to a person not a party to this action. (Stip. 2).

Numerous Agency inspections on various occasions between October 18, 1977 and April 20, 1982 have indicated that the Respondents did not operate their site in compliance with applicable regulations. (See: Complainant's Exhibits A through P). Some refuse is still present and visible on the property. (Stip. 5). The latest Agency inspection on December 21, 1982 revealed that, in order to properly close the site, exposed refuse on the northeast slope should be recompacted and covered; about 200 tires located on-site should be disposed of; and about one acre of unvegetated area should be seeded. The Agency estimates that the cost of such corrective measures will be around \$805.00. (Comp. Exh. Q).

The proposed settlement agreement provides that the Respondents admit the violations alleged in the Amended Complaint and agree to: (1) cease and desist from further violations; (2) promptly file a plat map with Douglas County; (3) properly and expeditiously close the site; and (4) pay a stipulated penalty of \$500.00 for each Respondent (payable in quarterly installments over a period of one year). (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 finds that the Respondents, Claude Burch and Clifford Burch, have violated Rules 202(a), 301, 303(a), 303(b), 305(a), 305(b), 305(c) and 311 of Chapter 7 and Sections 21(a) [formerly Section 21(b)], 21(b), and 21(d) [formerly Section 21(e)] of the Act. The Respondents will be ordered to cease and desist from further violations, follow the compliance plan for closing the site, and pay a stipulated penalty of \$500.00 each (in quarterly payments over a period of one year).

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. The Respondents, Claude Burch and Clifford Burch, have violated Rules 202(a), 301, 303(a), 303(b), 305(a), 305(b), 305(c), and 311 of Chapter 7: Solid Waste Regulations and Sections 21(a) [formerly Section 21(b)], 21(b), and 21(d) [formerly Section 21(e)] of the Illinois Environmental Protection Act.

2. The Respondents shall cease and desist from further violations.


3. Within 30 days of the date of this Order, each Respondent shall, by certified check or money order payable to the State of Illinois, pay the first installment of \$125.00 on the stipulated penalties of \$500.00 each (the remaining 3 equal payments of \$125.00 each shall be paid quarterly over a period of one year) which is to be sent to:

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

4. The Respondents shall comply with all the terms and conditions of the Stipulation and Proposal for Settlement filed on February 4, 1983, which is incorporated by reference as if fully set forth herein.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order were adopted on the 24th day of March, 1983 by a vote of S.O..



Christan L. Moffett, Clerk
Illinois Pollution Control Board