

ILLINOIS POLLUTION CONTROL BOARD
October 19, 1978

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
v.) PCB 78-46
)
ROBERT W. GOOLEY,)
)
Respondent.)

MR. JEFFREY S. HERDEN, ASSISTANT ATTORNEY GENERAL, APPEARED ON BEHALF OF THE COMPLAINANT.

MR. HOWARD BERLAND, ATTORNEY AT LAW, APPEARED ON BEHALF OF THE RESPONDENT.

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

This matter comes before the Board on the February 16, 1978 Complaint brought by the Illinois Environmental Protection Agency against Robert W. Gooley, Gerald W. Menke d/b/a Menke Sewer Service Company, and Winfield A. Gustafson d/b/a G & L Septic Tank Service Company. Count I of this Complaint alleged that Respondent Robert W. Gooley had violated Rules 202(a), 301, 310(b) and 314(c) of Chapter 7: Solid Waste Regulations and Section 21(b) and Section 21(e) of the Illinois Environmental Protection Act. Count II of the Complaint alleged that Gerald W. Menke, d/b/a Menke Sewer Service Company, had violated Section 21(f) of the Act. Count III of the Complaint alleged that Winfield A. Gustafson, d/b/a G & L Septic Tank Service Company, had violated Section 21(f) of the Act. On April 28, 1978, the Agency filed a Motion to Dismiss without prejudice the Respondents Gerald W. Menke d/b/a Menke Sewer Service Company and Winfield A. Gustafson d/b/a G & L Septic Tank Service Company from the case. On May 11, 1978, the Board granted the Agency's motion and dismissed Respondents Menke and Gustafson from the case. A hearing was held on June 13, 1978. The parties filed a Stipulation and Proposal for Settlement on June 16, 1978.

The stipulated background facts indicate that the Respondent, Robert W. Gooley ("Gooley"), owned a parcel of real estate located in Kane County, Illinois until May 12, 1977, when equitable title passed to a contract purchaser.

Prior to May 12, 1977, certain portions of the site were used as a landfill. Gooley accepted garbage, institutional and commercial refuse, wood and landscape wastes, as well as some liquids and sludges. The exact quantity of refuse accepted is unknown, since no records were kept indicating quantity of refuse received.

The Agency first inspected the site on February 11, 1975. Additional inspections took place on March 19, 1975, July 29, 1975, April 26, 1976, April 28, 1976, May 26, 1976 and September 21, 1977. These inspections indicated that: (1) refuse deposited at the site was not being spread and compacted as rapidly as it was deposited; (2) daily and final cover had not been applied; (3) liquid wastes and sludges had been accepted; (4) the property lacked fencing, gates or other measures to control access to the site; and (5) no operating permit had been obtained.

The Agency advised Gooley of its findings shortly after each inspection. Gooley indicated his willingness to properly close and cover the site, but took no action to implement his intentions.

Prior to May 12, 1977, Gooley had been involved in negotiations for the sale of the property encompassing the site with Burnidge Brothers-Almora Heights, Inc., ("Burnidge Brothers") a Delaware corporation and an Elgin, Illinois land developer. These negotiations proved successful, and Burnidge Brothers is now the contract buyer of the Gooley property.

The parties have stipulated that Burnidge Brothers has no responsibility or liability for the violations which occurred on the Gooley property and that Gooley has no present authority to enter upon the site to correct past violations. (Stipulation, p. 3; Record, p. 6). However, Burnidge Brothers voluntarily agreed to remedy the situation. At the hearing, the Assistant Attorney General stated that Agency investigators had visited the site on June 12, 1978 and indicated that Burnidge Brothers had already placed "at least 2 feet of final cover on portions of the Gooley property that had been used as a landfill." (R. 3).

The Agency has contended that the stipulated background facts show that the Respondent, Robert W. Gooley, has: (1) operated the site without a permit, in violation of Rule 202(a) of the Solid Waste Regulations and Section 21(e) of the Act; (2) not performed the requirement of Solid Waste Rule 303(b), in that refuse was not spread and compacted as rapidly as it was deposited, in violation of Solid Waste Rule 301 and Section 21(b) of the Act; (3) not performed the requirements of Solid Waste Rules 305(a) and 305(c), in that daily and final cover were not applied in violation of Rule 301 of the Regulations and Section 21(b) of the Act;

(4) not performed the requirement of Solid Waste Rule 310(b), in that liquid wastes and sludges were accepted at the landfill, in violation of Solid Waste Rule 301 and Section 21(b) of the Act; and (5) operated the site without providing fencing, gates or other measures to control access to the site, in violation of Solid Waste Rule 314(c) and Section 21(b) of the Act.

The Respondent, Robert W. Gooley, has admitted these violations of the Board's Solid Waste Regulations and the Act. Accordingly, as a result of settlement discussions between the Agency and the Respondent, the parties have filed a Stipulation and Proposal for Settlement. Basically, the settlement agreement provides that the Respondent shall: (1) cease and desist from further violations of the Board's Solid Waste Regulations and the Illinois Environmental Protection Act; and (2) pay a stipulated penalty of \$500.00 . The agreement also states that "Burnidge Brothers, not a party to this action, has undertaken to properly close and cover the site. Burnidge Brothers will do all things necessary to comply with the cover requirements of Rule 305(c) of the Regulations, and the monitoring and filing requirements of Rule 318." (Stipulation, p. 5). The purpose of this provision is to minimize the threat of any potential environmental problems which may occur at the site.

In evaluating this enforcement action and proposed settlement, 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. Incinerator, Inc. v. Illinois Pollution Control Board, 59 Ill. 2d 290, 319 N.E. 2d 794 (1974).

Accordingly, the Board accepts the Stipulation and Proposal for Settlement and finds Respondent Robert W. Gooley in violation of Rules 202(a), 301, 303(b), 305(a), 305(c), 310(b) and 314(c) of Chapter 7: Solid Waste Regulations and Section 21(b) and Section 21(e) of the Illinois Environmental Protection Act. The Board imposes the stipulated penalty of \$500.00 .

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 Robert W. Gooley has violated Rules 202(a), 301, 303(b), 305(a), 305(c), 310(b) and 314(c) of Chapter 7: Solid Waste Regulations and Section 21(b) and Section 21(e) of the Illinois Environmental Protection Act.

2. Within 35 days of the date of this Order, Respondent Robert W. Gooley shall pay the stipulated penalty of \$500.00 , payment to be made by certified check or money order to:

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

3. Respondent Robert W. Gooley shall comply with all the terms and conditions of the Stipulation and Proposal for Settlement filed June 16, 1978, which is incorporated by reference as if fully set forth herein.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 19th day of October, 1978 by a vote of 4-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board