

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	
)	
v.)	PCB 78-33
)	
FRED LEHMKUHL, CHARLES BRATVOGEL,)	
RICHARD JACKSON, CITY OF EAST ST.)	
LOUIS, a Municipal Corporation,)	
CHARLES GREEN, and ARNOLD SPIRTAS,)	
)	
Respondents.)	

MR. PATRICK J. CHESLEY, ASSISTANT ATTORNEY GENERAL, APPEARED ON BEHALF OF THE COMPLAINANT.

RICE, DURSO & RICE, ATTORNEYS AT LAW (MR. CARMEN S. DURSO, OF COUNSEL), APPEARED ON BEHALF OF RESPONDENTS FRED LEHMKUHL, CHARLES GREEN, AND ARNOLD SPIRTAS.

McROBERTS, SHEPPARD, McROBERTS & WIMMER, ATTORNEYS AT LAW (MR. WILLIAM L. WIMMER, OF COUNSEL) APPEARED ON BEHALF OF RESPONDENT CHARLES BRATVOGEL.

RIPPLINGER & RANSOM, ATTORNEYS AT LAW (MR. SCOTT DIXON, OF COUNSEL) APPEARED ON BEHALF OF RESPONDENT CITY OF EAST ST. LOUIS.

OPINION AND ORDER OF THE BOARD (by D. Satchell):

This matter comes before the Board on the February 6, 1978 Complaint brought by the Illinois Environmental Protection Agency ("Agency"). On August 18, 1978, the Agency filed a Motion to Amend the Complaint and Add Parties. On August 24, 1978, the Board entered an Order which granted the Agency's motion.

The Amended Complaint added Charles Green ("Green") and Arnold Spirtas ("Spirtas") as parties to this case. Count I of the Amended Complaint alleged that, from December 1, 1975 until April 1, 1976, Respondents Fred Lehmkuhl ("Lehmkuhl"), Charles Bratvogel ("Bratvogel"), Richard Jackson ("Jackson"), City of East St. Louis (the "City"), Green, and Spirtas operated a solid waste disposal site ("site") located to the rear of the Bi-State Warehouse at 650 North Front Street in the City of East St. Louis, St. Clair County, Illinois without an Operating Permit from the Agency in violation of Rule 202(a) of Chapter 7: Solid Waste Regulations ("Chapter 7")

Count II of the Amended Complaint alleged that, after refuse disposal operations ceased on April 1, 1976, the Respondents failed to place the requisite final cover on the site in violation of Rules 301 and 305(c) of Chapter 7 and Section 21(b) of the Act.

The first hearing in this case was held on August 9, 1978. After numerous discovery motions were filed, the Board entered an Order on January 10, 1980 which attempted to expedite the proceedings (i.e., a hearing was ordered to be held within 60 days). Further hearings were subsequently held on February 21, 1980 and March 5, 1980, during which settlements were presented.

On March 3, 1980, a Statement of Stipulated Settlement between the Agency and Respondents Lehmkuhl, Green, Spirtas and the City of East St. Louis was filed. At the March 5, 1980 hearing, a proposed, but unsigned, settlement between the Agency and Respondent Bratvogel was presented, because the Respondent lived and worked in another state. On November 10, 1980, the Statement of Stipulated Settlement between the Agency and Respondent Bratvogel was filed.*

Although the remaining Respondent, Mr. Richard Jackson, received a copy of the Amended Complaint and was personally served on April 19, 1978 with a Request to Admit Facts, he did not reply to the Agency's Request to Admit Facts and apparently did not choose to participate in these proceedings. (See: Comp. Exh. 1-2).

At the hearing on March 5, 1980, the Assistant Attorney General asked that the Board: (1) deem that the facts delineated in the Agency's Request to Admit Facts be considered as admitted proof of all the material allegations against Respondent Jackson; (2) impose a \$1,000.00 fine against Jackson; (3) order Jackson "to place final cover on the site so that he, in addition to the other parties, will be liable for the placement of the final cover on the site"; and (4) state that Jackson's "liability be joint and severable from the other Respondents". (R. 31-32).

Accordingly, under the Board's Procedural Rule 314(c), each of the matters of fact of which admission was requested is hereby deemed to be admitted because of Respondent Jackson's failure to reply to the Agency's Request to Admit Facts. Additionally, in accordance with the Board's Procedural Rule 327 on default, the Board believes it appropriate to find that Respondent Richard Jackson has violated Rules 202(a), 301, and 305(c) of Chapter 7: Solid Waste Regulations and Sections 21(b) and 21(e) of the Illinois

*Although the settlement was not signed at the time of the hearing, the substance of the Stipulation filed on November 10, 1980 was presented. The Board finds that Procedural Rule 331 has been substantially complied with.

Environmental Protection Act. Respondent Jackson is hereby ordered to cease and desist from further violations and pay a penalty of \$1,500.00

The Statement of Stipulated Settlement between the Agency and Respondent Bratvogel indicates that Mr. Charles Bratvogel subleased the property in question to the other Respondents for the purpose of operating a solid waste disposal site. Mr. Bratvogel had an agreement with Respondents Lehmkuhl, Spirtas, Green, and Jackson "that he would receive one dollar for every truck load of refuse dumped at the site." Refuse disposal operations were conducted from December 1, 1975 until April 1, 1976. It is stipulated that none of the Respondents had obtained an Operating Permit from the Agency for the site and that they failed to place the requisite final cover on the site. Thus, the proposed settlement agreement between the Agency and Bratvogel provides that Bratvogel shall: (1) cease and desist from using and/or operating a landfill on this site until a proper permit is obtained from the Agency; (2) promptly pay a one-fifth share of the cost (but in no event more than \$1,000.00) of placing the necessary final cover on the site; and (3) pay a stipulated penalty of \$250.00 .

The Statement of Stipulated Settlement between the Agency and Respondents Lehmkuhl, City of East St. Louis, Green, and Spirtas provides that the Respondents agree to: (1) cease and desist from using and/or operating a landfill on the site until a proper permit is obtained from the Agency; (2) pay a penalty of \$250.00 each; and (3) promptly place suitable final cover over the entire surface where refuse was deposited at the landfill site (i.e., "suitable cover material consists of any naturally occurring soil or earthy material which is free from refuse and large rocks" and "does not include cinders, pot ash, bricks, concrete, demolition wastes, and gob or other mining waste products"). Additionally, the Stipulation provides that "the method of application of the final cover and the source of machinery and labor shall be determined by the Respondents, Fred Lehmkuhl, Charles Green, and Arnold Spirtas" who "agree to keep detailed records concerning the cost associated with applying such final cover." Moreover, the City of East St. Louis has agreed "to pay a one-fifth share of the cost for the placement of final cover on the site."

In evaluating this enforcement action and the 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 these stipulated agreements acceptable under Procedural Rule 331 and Section 33(c) of the Act.

Respondents Lehmkuhl, Bratvogel, City of East St. Louis, Green, and Spirtas are hereby ordered to cease and desist from further violations, pay stipulated penalties of \$250.00 each, and follow the agreed-upon measures for placing suitable final cover on the site in accord with their respective proposed settlement agreements.

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 Richard Jackson has violated Rules 202(a), 301, and 305(c) of Chapter 7: Solid Waste Regulations and Sections 21(b) and 21(e) of the Illinois Environmental Protection Act.

2. Respondent Richard Jackson shall cease and desist from further violations.

3. Within 60 days of the date of this Order, Respondent Richard Jackson shall, by certified check or money order payable to the State of Illinois, pay a penalty of \$1,500.00 which is to be sent to:

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

4. Respondents Fred Lehmkuhl, Charles Green, Arnold Spirtas and the City of East St. Louis shall comply with all the terms and conditions of the Statement of Stipulated Settlement filed March 3, 1980, which is incorporated by reference as if fully set forth herein.

5. Respondent Charles Bratvogel shall comply with all the terms and conditions of the Statement of Stipulated Settlement filed November 10, 1980, which is incorporated by reference as if fully set forth herein.

6. Within 60 days of the date of this Order, Respondents Fred Lehmkuhl, Charles Bratvogel, City of East St. Louis, Charles Green, and Arnold Spirtas shall, by certified check or money order payable to the State of Illinois, pay the stipulated penalties of \$250.00 each, which are to be sent to:

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

Mr. Werner dissented. Chairman Dumelle concurred.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order were adopted on the 19th day of December, 1980 by a vote of 4-1.

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