

ILLINOIS POLLUTION CONTROL BOARD  
December 4, 1980

ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
 )  
Complainant, )  
 )  
v. ) PCB 79-20  
 )  
THE WIGGINS FERRY COMPANY, an )  
Illinois Corporation, ROBERT )  
STORMAN, C.B.C., INC., a Missouri )  
Corporation, COLONIAL BRICK COMPANY, )  
INC., an Illinois Corporation, and )  
FRED LEHMKUHL d/b/a L. AND L. )  
HAULING, )  
 )  
Respondents. )

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

GUNDLACH, LEE, EGGMANN, BOYLE & ROESSLER, ATTORNEYS AT LAW (MR. TERRY N. BROWN, OF COUNSEL), APPEARED ON BEHALF OF RESPONDENT WIGGINS FERRY COMPANY.

RICE, DURSO & RICE, ATTORNEYS AT LAW (MR. CARMEN S. DURSO, OF COUNSEL), APPEARED ON BEHALF OF RESPONDENTS FRED LEHMKUHL d/b/a L. AND L. HAULING; COLONIAL BRICK, INC.; AND C.B.C., INC.

MR. ROBERT STORMAN APPEARED PRO SE.

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

This matter comes before the Board on the January 30, 1979 Complaint brought by the Illinois Environmental Protection Agency ("Agency"). Count I of the Complaint alleged that the Respondents, the Wiggins Ferry Company ("Wiggins"); Mr. Robert Storman ("Storman"); Colonial Brick Company, Inc. ("Colonial"), and Mr. Fred Lehmkuhl d/b/a L. and L. Hauling ("Lehmkuhl"), from October of 1977 to August 23, 1978, caused or allowed the operation of a solid waste management site ("site") on a tract of land in an unincorporated area of St. Clair County, Illinois, west of National City, Illinois along Illinois Route #3 without an Operating Permit from the Agency in violation of Rule 202(a) of Chapter 7: Solid Waste Regulations ("Chapter 7").

Count I also alleged that: (1) Wiggins owned the tract of land; (2) Wiggins leased the site to Storman; (3) Wiggins and Storman permitted Colonial and Lehmkuhl to deposit refuse upon the site; (4) Colonial deposited refuse upon the site and agreed to cover such refuse; and (5) Lehmkuhl deposited refuse upon the site.

Count II alleged that, from May 12, 1978 until June 15, 1978, Respondents Wiggins, Storman, and Colonial 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 Illinois Environmental Protection Act ("Act").

Count III alleged that the Respondents failed to place final cover on the site in violation of Rules 301 and 305(c) of Chapter 7 and Section 21(b) of the Act.

Count IV alleged that Colonial and Lehmkuhl disposed of refuse at an unpermitted site in violation of Section 21(f) of the Act.

On February 13, 1979, Respondent Lehmkuhl filed a Motion to Dismiss or in the Alternative to Make the Complaint More Definite and Certain. On February 23, 1979, the Agency filed its Response to Lehmkuhl's motion. On March 1, 1979, the Board entered an Order denying Lehmkuhl's motion. After numerous discovery motions were filed, a hearing was held on May 23, 1979. Additional hearings were held on January 24, 1980 and July 2, 1980. On July 14, 1980, the Agency filed a Motion to Amend the Complaint, Amended Complaint, and Certificate of Service. The Amended Complaint substituted C.B.C., Inc., a Missouri corporation, in place of Colonial Brick Company, Inc., an Illinois corporation, as a Respondent (because, according to testimony at the hearings, C.B.C., Inc. was the legal entity which conducted the actual operation of the site during the relevant time period).

After the hearing of May 23, 1979, a Statement of Stipulated Settlement dated May 11, 1979 (i.e., Joint Exhibit 1) between the Agency and the Wiggins Ferry Company was filed with the Board. On July 25, 1980, a Statement of Stipulated Settlement between the Agency and Robert Storman was filed with the Board. On September 17, 1980, a Statement of Stipulated Settlement between the Agency and Respondents Colonial Brick Company, Inc., C.B.C., Inc. and Fred Lehmkuhl d/b/a L. and L. Hauling was filed with the Board.

The proposed settlement agreement between the Agency and the Wiggins Ferry Company provides that: (1) Wiggins owns the tract of land in St. Clair County which is the site in question; (2) Wiggins leased this site to Mr. Robert Storman (from approximately October of 1977 until August 23, 1978); (3) Storman allowed others to deposit refuse on the site (unknown to Wiggins); (4) "When Wiggins learned of the dumping on the site, it ordered Robert Storman to have the dumping stopped and to have the refuse covered"; and (5) Wiggins agrees to allow access by any party designated by the Agency; at the sole risk of said party, to bring

the site into compliance with the Board's Solid Waste Regulations and the Act. The parties have stipulated that, because of Wiggins' lack of involvement in the operation of the site as a landfill, they believe that no penalty ought to be assessed against Wiggins.

The Statement of Stipulated Settlement between the Agency and Mr. Robert Storman provides that: (1) During the relevant time period between October of 1977 and August 23, 1978, Storman allowed Mr. Phil Mumford, d/b/a Colonial Brick, Inc., and Mr. Fred Lehmkuhl "to deposit off-site refuse" on the property owned by Wiggins and leased to Storman; (2) Neither Storman, Colonial Brick, Inc., nor Fred Lehmkuhl had an Operating Permit for the site; (3) Daily cover was not placed on refuse from May 12, 1978 through June 15, 1978; (4) Appropriate final cover was not placed on the site; (5) Storman was not paid any money by Colonial or Lehmkuhl to allow them to deposit refuse on the property (although Storman "did derive a slight benefit because a low area on the site was filled"); (6) Storman had no knowledge of the requirements of the Board's Solid Waste Regulations or the Act; (7) Storman agrees not to allow any further refuse disposal on the site unless the requirements of Chapter 7 and the Act are complied with; (8) Storman shall cease and desist from further violations of Rule 202(a), 301, 305(a), and 305(c) of Chapter 7 and Section 21(b) of the Act; and (9) no penalty against Storman is necessary to aid in the enforcement of the Act.

The proposed settlement agreement between the Agency and Lehmkuhl provides that Lehmkuhl: (1) admits the allegations against him in Count IV of the Amended Complaint (i.e., that he disposed of refuse at an unpermitted site from November of 1977 through March 6, 1978 in violation of Section 21(f) of the Act) and (2) agrees to pay a stipulated penalty of \$500.00. Additionally, the Agency has agreed that the allegations in Count I of the Amended Complaint against Lehmkuhl should be dismissed.

The proposed settlement agreement between the Agency and Respondent Colonial Brick Company, Inc. and Respondent C.B.C., Inc. indicates that: (1) Mr. Phil Mumford (who is President of both Colonial Brick Company, Inc. and C.B.C., Inc.) "has testified under oath that C.B.C., Inc. was the entity which operated the solid waste management site alleged in the Complaint"; (2) C.B.C., Inc. admits the violations alleged in Counts I, II, III and IV of the Complaint in that it (a) operated the site without an Operating Permit from the Agency; (b) failed to apply the requisite daily and final cover; and (c) disposed of refuse at an unpermitted site in violation of Section 21(f) of the Act; (3) "C.B.C., Inc. agrees not to conduct any more refuse disposal operations at the site in the future" unless an Operating Permit from the Agency is first obtained; (4) C.B.C., Inc. agrees to promptly place the necessary final cover on a specified area of the property which is about 60' X 75' (most of the site has already been covered with the required final cover); and (5) C.B.C., Inc. agrees to pay a stipulated penalty of \$3,000.00 within 30 days of the date of the Board Order in this case (Mr. Phil Mumford has agreed to personally guarantee this payment).

In evaluating this enforcement action and the proposed settlement agreements between the Agency and the various Respondents involved in this case, 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 of the settlement agreements acceptable under Procedural Rule 331 and Section 33(c) of the Act.

The Board hereby: (1) grants the Agency's Motion to Amend the Complaint (thereby substituting C.B.C., Inc. for Colonial Brick Company, Inc. as a Respondent in this case); (2) dismisses Colonial Brick Company, Inc. as a Respondent in this case; (3) finds that C.B.C., Inc. has violated Rules 202(a), 301, 305(a) and 305(c) of Chapter 7 and Section 21(f) of the Act; (4) orders C.B.C., Inc. to expeditiously place the appropriate final cover on the specified uncovered area of the site (which is approximately 60 feet X 75 feet), subject to the requirements detailed in the proposed settlement agreement between C.B.C., Inc. and the Agency; (5) orders C.B.C., Inc. not to conduct any more refuse disposal operations at the site in the future unless a permit is issued by the Agency for such operation; (6) assesses a \$3,000.00 stipulated penalty against C.B.C., Inc.; (7) dismisses the allegations in Count I of the Amended Complaint against Fred Lehmkuhl d/b/a L. and L. Hauling; (8) finds that Lehmkuhl has violated Section 21(f) of the Act; (9) assesses a \$500.00 stipulated penalty against Lehmkuhl; (10) orders Mr. Robert Storman to cease and desist from further violations of Rules 202(a), 301, 305(a), and 305(c) of Chapter 7 and Section 21(b) of the Act; (11) assesses no penalty against Storman; (12) orders the Wiggins Ferry Company to allow access by any party designated by the Agency at the sole risk of said party; to bring the site into compliance with Chapter 7 and the Act; and (13) assesses no penalty against Wiggins.

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 Complainant's Motion to Amend the Complaint (thereby substituting C.B.C., Inc. for Colonial Brick Company, Inc. as a Respondent in this case) is hereby granted.

2. Colonial Brick Company, Inc. is hereby dismissed as a Respondent in this case.

3. The Respondent, C.B.C., Inc., has violated Rules 202(a), 301, 305(a) and 305(c) of Chapter 7: Solid Waste Regulations and Section 21(f) of the Illinois Environmental Protection Act.

4. C.B.C., Inc. shall expeditiously place the appropriate final cover on the specified uncovered area of the site (which is

approximately 60' X 75') subject to the requirements detailed in the Statement of Stipulated Settlement between C.B.C., Inc. and the Illinois Environmental Protection Agency which was filed on September 17, 1980.

5. C.B.C., Inc. shall not conduct any more refuse disposal operations at the site in the future unless a permit is issued by the Agency for such operation.

6. Within 30 days of the date of this Order, C.B.C., Inc. shall, by certified check or money order payable to the State of Illinois, pay the stipulated penalty of \$3,000.00 which is to be sent to:

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

7. The allegations in Count I of the Amended Complaint against Fred Lehmkuhl d/b/a L. and L. Hauling are hereby dismissed.

8. The Respondent, Fred Lehmkuhl d/b/a L. and L. Hauling, has violated Section 21(f) of the Illinois Environmental Protection Act by disposing of refuse at the unpermitted site alleged in the Amended Complaint from approximately November, 1977 through March 6, 1978.

9. Within 30 days of the date of this Order, Fred Lehmkuhl d/b/a L. and L. Hauling shall, by certified check or money order payable to the State of Illinois, pay the stipulated penalty of \$500.00 which is to be sent to:

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

10. The Respondent, Robert Storman, shall cease and desist from further violations of Rules 202(a), 301, 305(c) of Chapter 7: Solid Waste Regulations and Section 21(b) of the Illinois Environmental Protection Act.

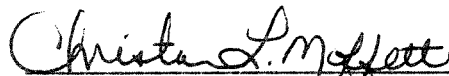
11. No penalty shall be assessed against Robert Storman.

12. The Wiggins Ferry Company shall allow access by any party designated by the Illinois Environmental Protection Agency at the sole risk of said party; to bring the site into compliance with the Board's Solid Waste Regulations and the Illinois Environmental Protection Act.

13. No penalty shall be assessed against the Wiggins Ferry Company.

14. The Respondents shall individually comply with all the terms and conditions of each of their executed Statements of Stipulated Settlement, which are all incorporated by reference as if fully set forth herein.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order were adopted on the 4<sup>th</sup> day of December, 1980 by a vote of 4-0.



Christan L. Moffett, Clerk  
Illinois Pollution Control Board