

ILLINOIS POLLUTION CONTROL BOARD
March 1, 1979

ENVIRONMENTAL PROTECTION AGENCY,)
)
 Complainant,)
)
 v.) PCB 78-251
)
ODELL PHILLIPS,)
)
 Respondent.)

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

MR. ODELL PHILLIPS APPEARED PRO SE.

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

This matter comes before the Board upon a complaint filed on September 13, 1978 by the Environmental Protection Agency (Agency). The complaint alleges that Respondent has caused or allowed operation of a solid waste management site located approximately two and one-half miles northeast of Arthur within the Northwest Quarter of Section 17, Township 15 North, Range 7 East of the Third Principal Meridian in Douglas County, Illinois from on or before July 1, 1970 up to the date of filing this complaint in violation of Section 21(e) of the Environmental Protection Act (Act) and Rule 202(b)(1) of the Chapter 7: Solid Waste Rules (Chapter 7). The complaint further alleges violations of Rules 301 and 305(a) of Chapter 7 and Section 21(a) and 21(b) of the Act; Rule 305(c) and Sections 21(a) and (b) of the Act; Section 9(c) of the Act, Rule 301 and 311 of Chapter 7 and Rule 502 of Chapter 2: Air Pollution Control Regulations; Rules 303(b) and 301 and Section 21(b) of the Act; Rules 303(a) and 301 of Chapter 7 and Section 21(b) of the Act; Rules 304 and 301 of Chapter 7 and Section 21(b) of the Act; and Rules 306 and 301 of Chapter 7 and Section 21(b) of the Act. A hearing was held on November 28, 1978

An unanswered request to admit facts was introduced as part of Complainant's case (Comp. Ex. 1). Under Board Procedural Rule 314 the requested admissions are deemed admitted unless answered within twenty days of service. As Respondent never answered the request for admissions of facts, the facts are deemed admitted. These admissions contain the information necessary for the Board to find violations of the allegations in the complaint. However, the Board will consider the information presented at hearing.

Respondent, Odell Phillips, does not read or write (R. 30). He has a second grade education and can sign his name (R. 30). He lives on the property in question with his wife and five children (R. 30, 33). He makes \$150 per week (R. 33). The property consists of 18.4 acres purchased by contract in 1969 (R. 62, 38, 39). Mr. Phillips is still paying for the property (R. 39). The landfill is located south of the house (R. 31). The former owner ran a landfill at the site and had a permit from the Department of Health (R. 38). Respondent went to Champaign to the Department of Health apparently about a permit in 1969; however, he has never had a permit from the Agency (R. 38).

Mr. Paul Oziar has covered the area several times and in turn was allowed to bury some demolition waste at the site (R. 13, 14). He has not received money from Respondent and has not paid any money for disposal privileges (R. 14). Mr. Oziar uses the site only a few times a month on Saturdays (R. 19, 35, 36).

Mr. Phillips has told people not to deposit wastes on his land and has put up a gate with a chain and lock (R. 32, 24). People have continued to dump refuse either gaining entrance by lifting the gate off the hinges or going through the gate left unlocked for Mr. Oziar (R. 35). Other than Mr. Oziar no one has had permissions to dump refuse on the property and no one had permission to burn anything (R. 32, 52).

The parties all agree the site is not acceptable for a sanitary landfill. Mr. Oziar states it is not a proper place because of the flooding (R. 22). Respondent asked people to quit dumping because it's too close to the river (R. 32). The Agency's inspector testified the site is probably a bad location for refuse disposal operations because of its proximity to the river and the sandy nature of the soils (R. 44, 45). Because of soil permeability it would not hold the products of biodegradation of the refuse (R. 45).

The Board finds that Mr. Phillips is in violation of all counts of the Complaint. In making a final determination the Board must consider the factors of Section 33(c) of the Act. The site is of little social or economic value as an unpermitted dump. It is not a money making venture for Respondent and the cost of cover would be a liability. The potential for pollution at the site is high because of its location and the violation of all the rules intended to protect the environment. It appears the best technologically and economically feasible method of compliance is to close the site to prevent future deposits. Respondent is not financially well off and without the aid of

Mr. Oziar would have great difficulty in compliance. Complainant does not request a penalty (R. 65, 66). Although the violations in this case have been ongoing for some time, the Board finds that the money for a penalty would be better spent in attaining compliance. Thus the Board will require Respondent to cease and desist further violations and cover the site in accordance with Rule 305(c) of Chapter 7. Respondent shall be required to restrict access to the site. This shall be done in a manner acceptable to the Agency within ninety days of this Order. No penalty will be assessed.


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

ORDER

It is the Order of the Pollution Control Board that:

1. Odell Phillips is found to be in violation of Rule 202(b)(1) of the Chapter 7: Solid Waste Regulations and Section 21(e) of the Environmental Protection Act, Rules 301, 305(a), 305(c), 304, 303(a), 303(b) and 306 of Chapter 7 and of Sections 21(a) and 21(b) of the Act and Rule 311 of Chapter 7 and Rule 502 of Chapter 2: Air Pollution Control Regulations and Section 9(c) of the Act.
2. Respondent shall cease and desist further violations of the Act and the Regulations.
3. Respondent shall apply final cover in accordance with Rule 305(c) and restrict access to the site. This shall be done in a manner acceptable to the Environmental Protection Agency within ninety days of this Order.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 13th day of March, 1979 by a vote of 4-0.


Christan L. Moffett, Clerk
Illinois Pollution Control Board