

ILLINOIS POLLUTION CONTROL BOARD
August 29, 1972

ENVIRONMENTAL PROTECTION AGENCY)
)
 Complainant,)
 v.) PCB 72-124
)
 ROY FRIETSCH, EARL I. SWORDS, and)
 JESS G. BUEHLER,)
 Respondents.)

Richard Baner, Assistant Attorney General, for the Environmental Protection Agency;
Hollis Benjamin for Respondent Swords; Jess G. Buehler; pro se,
Roy Frietsch, pro se

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

This is an enforcement proceeding brought by the Agency against Roy Frietsch, Earl I. Swords, and Jess G. Buehler. The complaint as amended alleges that Frietsch is the operator and Swords and Buehler are the owners of a refuse disposal facility in Peoria County, that the facility has been operated without having been registered with the Illinois Department of Public Health and without benefit of an Agency permit. Respondents are charged with having caused or allowed open dumping of refuse on the site of the disposal facility, with failure to properly spread and compact the refuse, and failure to provide daily cover on the site on thirteen separate dates extending from August 10, 1970 through January 28, 1972.

Prior to the public hearing, which was held July 15, 1972, Respondent Swords moved to strike the complaint as to him on the basis that he at no time owned or had any interest in the real estate involved in this proceeding, and that his sole interest in the property was as a co-executor along with a Bank named in the will of his father, Charles L. Swords, who had owned the property prior to his death on May 20, 1969. On the day of the hearing, the parties entered into a stipulation, which was read at the hearing (R.9-12), concerning the facts which form the basis for the motion to strike. On the basis of these stipulated facts, which support the motion, we find and hereby hold that Respondent Earl I. Swords at no time had any interest or control over the property involved in this proceeding, and that he was not responsible for the activities complained of. Accordingly, the motion to strike as to Respondent Swords is granted.

The stipulated facts as concerns the motion to strike show that Respondent Buehler gained the sole right to possession of the property here involved on July 1, 1969 pursuant to an Agreement for Deed between Buehler and the executors of the estate of Charles L. Swords. Respondent Buehler has effectively owned the property here of interest throughout the entire period of time involved in these proceedings. (R.49).

The record shows that the property involved in this proceeding comprises approximately 17 acres (R.25) and is located such that in order to reach it, it is necessary to pass through an adjoining property also owned by Buehler and used as a go-cart track (R.38). Buehler has permitted a tenant to manage the go-cart operation (R.38, 60).

In testifying at the public hearing, Buehler said that he had instructed his tenant to permit Respondent Frietsch to dump building demolition debris in the 17 acre area (R.41-42). Buehler admitted that he observed dumping of building demolition materials in the area by trucks bearing the name of Frietsch on three separate occasions after July 1, 1970 (R.35-40). He also admitted that he had never applied for or obtained a permit for the dumping (R.48-49).

Respondent Frietsch testified that he was in the trucking and excavating business (R.79), that two or three trucks bearing his name had been used for dumping on the property prior to July 1, 1970 (R.83, 85, 99), and that some dumping had taken place in the Spring of 1971 (R.87). He also had not applied for or obtained a permit (R.86). Frietsch stated that he stopped dumping activity upon receiving telephone instructions to do so over a year ago (R.98-99) and that he has not deposited any refuse on the property since that time (R.81).

Witnesses on behalf of the Agency testified that they inspected the dumping site on each of the thirteen dates alleged in the complaint, and described what they saw and photographed. The dumping site constitutes a pile 60 to 70 feet high of lumber and other wood materials and general demolition waste, the refuse being dumped from the top and pushed down the faces of the pile (R.119-120, 133-134). The pile is formed with three tiers, the top and middle tiers being each approximately 25 feet in height and the bottom tier about 15 feet high (R.140-141). Each tier is separated from the next by a 50 foot wide plateau (R.167). As depicted by the photos (see Agency Exhs. 7-11) as well as the testimony (R.155), the faces of the tiers are steeply sloped at 30 to 60 degrees.

The Agency witnesses testified that they found some evidence of cover on top of the pile (R.119), and that a bulldozer was present at the site on occasion (R.137-139). They found no evidence at any time, however, of spreading, compacting or covering of the faces of the tiers (R.119-120, 125, 135, 136, 140, 142, 152, 155, 175).

The record contains numerous descriptions by the Agency witnesses of the size, shape and condition of the refuse pile at spaced time intervals. For the most part, the condition of the dumping site remained the same throughout the time period covered by the Complaint (R.136, 137, 139, 140, 151-155, 175, 176), and it thus appears that open dumping activities ceased at about the time Agency investigators began visiting the area.

In fact the Agency witnesses actually observed open dumping taking place only once. Agency photographer Vollmer testified that he visited the dump site on March 30, 1971 accompanied by two other Agency representatives (R.103), that he drove into the dumping area behind a truck bearing the name of Frietsch loaded with building demolition refuse (R.108) and watched as the truck deposited the refuse over the face of the second tier of the refuse pile (R.109). On the same day the Agency representatives encountered Respondent Buehler near the dump area (R.112). Buehler told them that he would cease all dumping activity upon being ordered to do so (R.113).

Both of the Respondents Buehler and Frietsch expressed their willingness to compact and cover the refuse on the site (R.180-182, 185-186) even though it will likely be necessary initially to spread the material so as to reduce the steep slope of the pile (Agency witness R.167-168).

The testimony of Respondents Frietsch and Buehler and of the Agency witness Vollmer shows, then, and we find that Respondent Frietsch has caused, and Respondent Buehler has allowed, open dumping of building demolition refuse. We also find that both Respondents have failed to properly spread, compact and cover the refuse. We conclude that both Respondents have violated the laws and regulations which prohibit and limit the open dumping of refuse. A cease and desist order will be entered as well as a requirement that Respondents spread, compact and cover the refuse immediately. Although the Agency seeks a money penalty in the amount of \$10,000 per violation and up to \$1,000 for each day the violation continued, we believe that lesser penalties in the amounts of \$400 against Respondent Buehler and \$400 against Respondent Frietsch are appropriate in view of Respondents' prompt termination of the dumping activities and firm resolve to avoid future violations.

This Opinion constitutes the Board's findings of fact and conclusions of law.

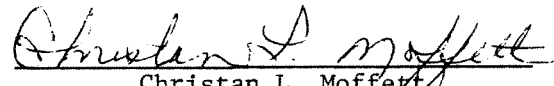
ORDER

1. Respondents shall cease and desist from the open dumping of refuse on the property owned or controlled by Respondent Buehler located in Peoria County, Illinois.
2. Respondents shall immediately spread, compact and cover the refuse presently on the property in a manner acceptable to the Agency.

3. Respondent Buehler shall pay to the State of Illinois by October 4, 1972 the sum of \$400 as a penalty for the violations found in this proceeding. Penalty payment by certified check or money order payable to the State of Illinois shall be made to: Fiscal Services Division, Illinois EPA, 2200 Churchill Drive, Springfield, Illinois 62706.

4. Respondent Frietsch shall pay to the State of Illinois by October 4, 1972 the sum of \$400 as a penalty for the violations found in this proceeding. Penalty payment by certified check or money order payable to the State of Illinois shall be made to: Fiscal Services Division, Illinois EPA, 2200 Churchill Drive, Springfield, Illinois 62706.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 24th day of August, 1972 by a vote of 5-0.


Christan L. Moffett