

ILLINOIS POLLUTION CONTROL BOARD
June 9 , 1977

PEOPLE OF THE STATE OF ILLINOIS,)
)
 Complainant,)
)
 v.) PCB 76-261
)
CHESTER BURKS & HAROLD G. QUICK,)
SR., d/b/a BURKS AND QUICK SAND,)
)
 Respondents.)

Mr. Patrick J. Chesley, Assistant Attorney General, appeared for the Complainant; Mr. Harold J. Pennock, Jr. appeared for the Respondents.

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

The Attorney General of Illinois filed this complaint for the People of Illinois on October 20, 1976. The complaint alleges that Respondents operate a sand and gravel pit in Clinton County approximately one and one half miles west of Sandoval, Illinois, north of U.S. Route 50; that these Respondents have conducted a mining operation without a permit from the Environmental Protection Agency (Agency) in violation of Rule 201 of Chapter 4: Mine Related Pollution (Chapter 4); and that Respondents have excavated a portion of an unnamed tributary of Lost Creek which constitutes a contact or interference with waters of Illinois which can reasonably be expected to cause or allow pollution of the waters in violation of Rule 301(a) of Chapter 4.

A hearing was held on April 25, 1977 at which time a Statement of Stipulated Settlement was presented for the Board's approval. No testimony was given.

The agreement states that Respondents operate a sand and gravel pit in Clinton County; however, only sand has been produced from the pit. The mechanical operation of the site began on May 5, 1976 and continued on a regular basis until the filing of the complaint in this case, October 20, 1976 (Stip. #3). This operation occurred without an operating permit issued by the Agency (Stip. #4). Respondents were informed in mid-August 1976 of the need for the permit and on August 31, 1976 they applied for the appropriate permit (Stips. #5 and #6).

After receiving additional information from Respondents the Agency issued a permit to open and operate the mine site in question (Stip. #9). Respondents had pushed dirt into the stream of the unnamed tributary to Lost Creek to make a cross-over for equipment. Upon notice by the Agency that such action was prohibited Respondents returned the stream to its former level and erected a barrier between the tributary and the excavation to prevent further seepage or overflow (#10). This activity took place during a ten day period in August, 1976 (#10).

Respondents have agreed not to fill or conduct any mining around the stream because of the possibility of environmental damage. Because of Respondents' actions and promises concerning the use of the unnamed tributary to Lost Creek, the Complainant moves to dismiss Count II of the complaint alleging violations of Rule 301(a) of Chapter 4.

The parties stipulated that the sand and gravel pit has some social and economic value to the community. The agreement states that suitability of the site is not in issue as a permit has been issued. The parties agree that considering the nature of the conditions at the subject site, Respondents' efforts to implement environmental safeguards and the size of Respondents' operation that a \$200 penalty is appropriate to maintain the integrity of the permit system.

The Board finds the conditions of settlement acceptable under Procedural Rule 331. The allegation of violation of Rule 301(a) is dismissed. The Board does find a violation of Rule 201 of Chapter 4. The Board in considering the factors of Section 33(c) of the Environmental Protection Act agrees with the parties that the site does have social and economic value. The issuance of a permit removes the location and the economic and technological feasibility problems from issue. No permanent damage has been shown. However, the permit system is the key to the protection of the public. The Board finds the \$200 penalty as sufficient to aid in the enforcement of the Act.

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

ORDER

It is the Order of the Pollution Control Board that:

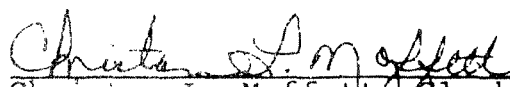
1. Chester Burks and Harold G. Quick, Sr., d/b/a Burks and Quick Sand are found to have been in violation of Rule 201 of Chapter 4: Mine Related Pollution Regulations.

2. The allegation of violation of Rule 301(a) of Chapter 4 is dismissed.

3. Respondents shall pay a penalty of \$200 within 45 days of this order. Payment shall be by certified check or money order payable to:

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

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 9th day of June, 1977 by a vote of 5-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board