

ILLINOIS POLLUTION CONTROL BOARD
November 2, 1978

ENVIRONMENTAL PROTECTION AGENCY,)
)
 Complainant,)
)
 v.) PCB 78-164
)
 HENRY SCHUCK,)
)
 Respondent.)

MR. GEORGE TINKHAM, ASSISTANT ATTORNEY GENERAL, APPEARED ON
BEHALF OF THE COMPLAINANT.

MR. HENRY SCHUCK APPEARED PRO SE.

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

This matter comes before the Board upon a complaint filed by the Environmental Protection Agency (Agency) on June 5, 1978. The complaint alleges that Henry Schuck operates or causes to be operated a solid waste management site located in the North 1/2, Northwest 1/4, Section 5, Township 25 North, Range 3 West of the Third Principal Meridian in Tazewell County, Illinois without an operating permit in violation of Rule 202(b)(1) of the Chapter 7: Solid Waste Rules and Regulations (Chapter 7) and Section 21(e) of the Environmental Protection Act (Act). A hearing was held July 31, 1978. At that time the complaint was amended to allege a permit violation through the date of July 31, 1978 (R. 49, 50). Also added was a second count alleging violations of Rule 305(a) and (c) of Chapter 7 and Section 21(b) of the Act from June 2, 1977 until July 31, 1978 (R. 51).

Complainant's Exhibit 7 is a Request for Admission of Facts and a Request for Admission of Documents. The documents were served on Respondent and no answer was received (R. 47, 48). Under Board Procedural Rule 314 unless a response is received within twenty days the requests for admissions are deemed admitted. Thus in this case the requested admissions are admitted. This alone is enough to find Respondent in violation of the original complaint; however, the Board will consider the evidence presented at hearing.

Several Agency inspections were made from June 2, 1977 to July 25, 1978 (Comp. Ex. 1, 2, 4, 6, 8). All the inspections showed lack of any appropriate cover. Mrs. Schuck stated that there has never been a permit issued from the Agency for the site (R. 7).

The site is in a rural area north of Morton, Illinois (R.28). It is comprised of several small areas, various gullies with refuse dumped along the side of the gullies (R. 28). On his February 2, 1978 inspection John Taylor, an Agency employee, saw no evidence that would suggest the site was being covered (R.29).

The case for Mr. Schuck (who is 82 years old) was presented by Mrs. Schuck who is a joint owner in the property (Comp. Ex. 2, R. 7). The Schucks maintain that the operation on their farm is not a sanitary waste disposal, but an attempt to stop erosion of the gully and to build a road to connect portions of their farm (R. 78). The refuse is dumped and then occasionally the area will be spread and compacted (R. 62, 64). The road is to provide a shorter route to move farm equipment from one area to another (R. 60, 61). The Schucks only want gravel, bricks or concrete left over from building operations (R. 57, 85). However, materials at the site include tires, old cars, barrels, demolition material and putrescible material (R. 73, 74, 75, 99). Some people evidently dump waste on the site as they please (R. 61, 72). The site has a cable across the road and a no dumping sign (R. 63, 67); however, the cable does not have a padlock and is attached to a pole by a hook (R. 66).

The Board finds that there is more than sufficient evidence to find Respondent in violation of the permit requirements of Rule 202(b)(1) of Chapter 7 and Section 21(e) of the Act and the daily and final cover requirements of Rules 305(a) and 305(c) and Section 21(b) of the Act. Before making a final determination the Board must consider the factors of Section 33(c) of the Act. The Board has been presented little information concerning the geological formation at the site; therefore, it is difficult to assess whether the site is suitable for refuse disposal. It may well be feasible to fill an area for a road in this manner; however, the information necessary to make this determination would be that required on a permit application. Uncovered refuse scattered about allows the potential for the harborage of vectors and the potential for water pollution as water passes through the refuse producing leachate which can contaminate surface and ground water. In this case no actual injury has been shown, although there is discolored water with barrels standing in it (Comp. Ex. 6, R. 9). There certainly is a high potential for public injury. The need for a road would indicate that the project has some social and economic value; however, the road could be accomplished through other methods or with a permit. The Schucks own just under 400 acres (R. 7). There is no evidence the Schucks are technically or economically unable to comply with permit requirements. The Agency has been involved at this site since 1970 (R. 11). Some of the refuse, particularly old car bodies, has been on the site for fifteen years (R. 71, 74).

The Board finds that a penalty is necessary to aid the enforcement of the Act in this case. A penalty of \$400 will be assessed. Respondent will also be required to cease and desist further violations of the Act by submitting a compliance plan for either obtaining a permit or properly closing the site within sixty days of this order. Respondent shall then have 120 days to implement this plan.

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

ORDER

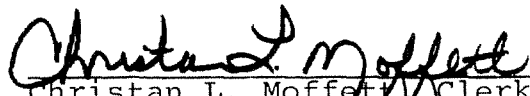
It is the Order of the Pollution Control Board that:

1. Henry Schuck 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 and Rules 305(a) and 305(c) of Chapter 7 and Section 21(b) of the Act.
2. Respondent shall cease and desist further violations of the Act by submitting to the Agency within sixty days of this order a compliance plan to either obtain a permit or properly close the site. Respondent shall then have 120 days to implement the plan.
3. Respondent shall pay a penalty of \$400 within thirty-five days of this order. Payment shall be by certified check or money order to:

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

Mr. Nels Werner dissented.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 2nd day of November, 1978 by a vote of 3-1.


Christan L. Moffett, Clerk
Illinois Pollution Control Board