

ILLINOIS POLLUTION CONTROL BOARD  
May 31, 1973

ENVIRONMENTAL PROTECTION AGENCY, )  
 )  
 Complainant, )  
 )  
 v. ) PCB 72-507  
 )  
 FRANK NUTTY, INC. & PAUTLER )  
 BROTHERS CONTRACTORS, INC., )  
 )  
 Respondent. )

Thomas J. Immel, Assistant Attorney General, on behalf of  
Complainant;  
Don P. Koeneman on behalf of Respondent.

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

Complaint was filed by the Agency on December 20, 1972, against Respondents Frank Nutty, Inc. and Pautler Brothers Contractors, Inc., Joint Venturers. The Respondents were engaged as contractors to clear 1,100 acres of The Cedar Creek Dam and Reservoir Project located approximately five miles southwest of Carbondale, Jackson County, Illinois.

The complaint charges that Respondents caused or allowed the open burning of refuse in violation of Section 9(c) of the Environmental Protection Act (Ill. Rev. Stat., 1972, ch. 111½, §1009(c)) and in violation of Rule 502 of the Rules and Regulations Governing the Control of Air Pollution continued effective pursuant to Section 49(c) of the Act. The Agency further charges that Respondents caused or allowed the open burning of refuse without first obtaining a permit from the Agency in violation of Rule 504(a)(4) of the Rules.

This action comes before the Board on a Stipulation of Facts entered into by the respective parties. From that Stipulation it appears:

1. That Respondents obtained a permit from the Agency to open burn the trees and vegetation at the Cedar Creek site, which permit expired on July 1, 1972;

2. That on October 20, 1972, Respondents were still engaged in clearing operations and had stockpiled trees and brush at various locations within the project;

3. That on October 20, 1972, Respondents open burned the stockpiled trees and brush;

4. That no other incidents of open burning occurred between July 1 and October 20, 1972;

5. That Respondents knew or should have known that the open burning of trees and brush after July 1, 1972 was prohibited; that Respondents knew or should have known that open burning after July 1, 1972 without an air curtain destructor could be permitted only pursuant to a variance from the Pollution Control Board.

Respondents admit, therefore, that they violated Section 9(a) of the Act and Rule 504(a)(4) on October 20, 1972 and a penalty will be imposed. In mitigation thereof, the Board finds that for reasons beyond the control of Respondents, project delays caused by tardy right-of-way acquisition resulted in the Respondents being unable to complete clearing operations by July 1, 1972 (R. 20, Stipulation 8). Further, no people live in the area in question and the Agency has received no citizen complaints (R. 39).

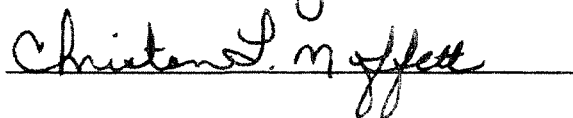
This opinion constitutes the findings of fact and conclusions of law of the Board.

IT IS THE ORDER of the Pollution Control Board that:

1. Respondents cease and desist any further open burning on the project site without having first obtained a permit from the Agency or a variance from this Board.

2. Both Respondents, individually, shall pay to the State of Illinois the sum of \$250 within thirty days of the date of this Order. Penalty payment by certified check or money order payable to the State of Illinois shall be made to: Fiscal Services Division, Illinois Environmental Protection Agency, 2200 Churchill Road, Springfield, Illinois 62706.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, certify that the above Opinion and Order was adopted by the Board on the 31<sup>st</sup> day of May, 1973, by a vote of 4 to 0.

  
Christan L. Moffett