

it in his view not being a landfill at all, he did not have to cover the wood (R. 42-43). He stated: "It hasn't never been covered. There is no - - we have no fill operation. There is no hole there or no nothing to fill with." (R. 43).

Respondent is charged with causing or allowing the open dumping and open burning of refuse at the site on five specific dates: May 7, 1971; June 24, 1971; Nov. 29, 1971; Dec. 9, 1971; and March 7, 1972. We will consider each date individually:

May 7, 1971 -

A witness testified that he saw brush and lumber stockpiled near Respondent's invention (R. 50), and concluded that it was "open dumped" (R. 51). An Agency inspection sheet (EPA Ex. #13) noted that combustible matter was present, was uncovered, but was properly spread and compacted. This constituted the extent of the Agency's proof on this date. No proof was introduced regarding the time the materials had been deposited, how they had been deposited, who had deposited them, or whether they were covered by the end of the day as the regulations require. No burning was shown. We find the proof insufficient to support the allegations of violations on this date.

June 24, 1971 -

An Agency witness testified that he saw a pile of refuse, wood, tire rims and some wire on the site on this date, and he added that he observed an area "smoldering" there (R. 54-56), and detected some smoke as well (R. 64). Another Agency witness also testified that he observed smoldering (R. 75-81) and smoke emanating from an area behind Respondent's invention (R. 76). Both witnesses testified that Respondent physically menaced them preventing their continued investigation of the site. A resident of Bourbonnais said that burning at the site was a "common occurrence" and that "there is constantly burning" there (R. 133), notwithstanding Respondent's statement that burning only occurs approximately once a year at the site (R. 25-26, 42). This witness went on to confirm that there was a fire on the site on June 24 (R. 134).

The testimony that the burning did in fact occur on this date is both believable and virtually uncontradicted. Respondent does not deny that open burning took place on his site on the dates alleged in the complaint, but merely states that he does not "recall" whether or not it did (R. 37-38). He repeatedly asserted that he should not be held responsible for the fires unless and until someone could show that he actually set them (R. 37-38, 213-214); no evidence was introduced to suggest that the fires were accidentally started,

and there was no apparent effort by Respondent to extinguish the flames after they had been detected.

In our view, the testimony regarding the burning operations, the character and degree of the nuisance caused thereby, and the damage inflicted on Respondent's neighbors as a result of such operations satisfied the initial burden of proof incumbent upon the Agency. As we have said in similar cases, the burden then shifted to Respondent to rebut the allegations, to offer a satisfactory explanation in defense of the charges. EPA v. Neal Auto Salvage, Inc., PCB 70-5 (Oct. 28, 1970). No such explanation or mitigating evidence was forthcoming. The testimony also indicated that fires may have occurred at the site with a certain degree of regularity, and the hazard to nearby residents imposed upon Respondent the further duty to do all that he could to prevent a recurrence of such episodes. We find that he has failed to meet his burden to rebut the evidence presented against him; we find that Respondent has failed to provide the necessary degree of care to prevent the burning at his site, whether or not such burning was accidental or deliberate; and we find that there was open burning at the site on this date in violation of law.

Nov. 29, 1971 -

An Agency engineer, responding to a complaint he had received on the morning of Nov. 29, 1971, visited the site and witnessed several areas of fire and flame (R. 86-87). A builder, whose property is near the site, testified that there was a large fire at the site on this date, measuring some 250 feet by 50 feet, which blew smoke and hot embers over the roof of his house (R. 107-108). He described the fire as being "enormous" (R. 134) and said flames and sparks were landing on his property, his shrubbery, and his house causing great damage (R. 135). He said there were often fires there that had affected the health of his children (R. 133, 136) and caused him financial damage as well (R. 138). We find the evidence supports the charge of open burning at the site on Nov. 29, 1971 for the same reasons stated above regarding the June 24 incident.

Dec. 9, 1971 -

A witness testified that there was a fire on Mr. Ford's property on Dec. 9, 1971 (R. 135). No other evidence was offered regarding alleged violations on this date, and we feel that the unelaborated statement that a fire occurred on that date, unsupported by additional evidence of any kind whatsoever, is inadequate grounds upon which to find violation.

March 7, 1972 -

An Agency witness testified that he observed stockpiled brush at the site on this date (R. 65) which Respondent told him was to be burned in the annihilator (R. 67). He said he saw some ashes, and evidence of past burning (R. 58) but did not testify that a fire was then burning. The neighbor who had observed the fire on Nov. 29 and had testified that a fire also occurred on Dec. 9 said he saw a fire there on March 7, 1972 as well (R. 135). No further evidence of this fire was introduced. We find this insufficient to prove a violation on this date.

In summary, we find a violation of the open burning regulations on June 24, 1971 and on November 29, 1971. The evidence allows the reasonable inference that Respondent was accumulating or stockpiling wood products to burn in his incineration device, and whether or not this was the actual origin of the fires in question, there seems no doubt that Respondent allowed such fires to occur. EPA Exhibit #30 is a petition signed by approximately fifty nearby residents asking that the fires on Respondent's property cease. Aside from individual instances of damage caused by the fires, therefore, it appears that such occurrences have caused a nuisance in the area, and have unduly bothered Mr. Ford's neighbors.

Mr. Ford's defense seems to be that since no one ever saw him toss a match into the accumulated wood and brush piled up on his land, and since he prefers to call his operation a "salvage yard" rather than a "landfill" or "dump," he should be excused from applicable provisions of the law covering such activities. We reject such contentions. Under our State law, accountability for pollution violations extends to those who allow as well as to those who cause the contamination of our environment. We will order Respondent to immediately cease and desist violating the law at the site, and to pay \$2,000 for the violations which have been proved, \$1,000 for each instance. And since this is not the first time Respondent has appeared before us on relatively similar matters, we remind him that we will not take kindly to a third appearance, and that the pollution laws which we enforce today are meant to be obeyed and not ignored.

ORDER

1. Respondent shall immediately cease and desist the open burning of any materials whatsoever on his property, and shall secure a permit from the Illinois Environmental Protection Agency in the event he wishes to burn materials in any enclosed device or incinerator;

2. Respondent shall pay to the State of Illinois within thirty-five (35) days from the date hereof, the sum of \$2,000 as a penalty for the violations found in this proceeding. Payment shall be made by certified check or money order payable to the State of Illinois, and shall be sent to "Fiscal Services Division, Illinois Environmental Protection Agency, 2200 Churchill Drive, Springfield, Illinois 62706."

I, Christan Moffett, Clerk of the Pollution Control Board, certify that the Board adopted the above Opinion & Order this 24th day of August, 1972, by a vote of 6-5.

