ILLINOIS POLLUTION CONTROL BOARD September 16, 1971

ENVIRONMENTAL	PROTECTION	AGENCY)		
	V.)	PCB	71-53
)		
CHARLES R. RHO	DDES) .		

Larry R. Eaton, attorney for the Environmental Protection Agency James E. Henson and Jeffrey Davison, attorneys for Charles R. Rhodes

Opinion and Order of the Board (by Samuel R. Aldrich):

Charles R. Rhodes was charged with a number of violations of the Rules and Regulations for Refuse Disposal Sites and Facilities ("Land Rules") and of the Environmental Protection Act ("Act"). Respondent owns and operates a landfill near Decatur, Illinois. At the hearing on July 16, 1971, two of the alleged violations were dropped by the Environmental Protection Agency (R. 129). We find the evidence establishes several of the charges and impose a money penalty and a cease and desist order.

On July 21, 1971, Mr. Rhodes filed a motion to dismiss the complaint, contending that the Land Rules are not applicable to his landfill site. The motion notes that Section 475 of the 1965 Illinois Refuse Disposal Law specifically excepted from the Land Rules any county having a department of public health. The Rhodes landfill is located in Macon County which has had a department of health since 1963 (R.266). Respondent contends that, although Section 475 was later repealed, the Land Rules have not been made applicable to the counties originally exempted. As we noted in another case (EPA v. Bath, Inc. and John L. Walker, PCB 71-52) this argument is entirely without merit. The exemption afforded Macon County by Section 475 disappeared with repeal of that Section. We find that the Land Rules are fully applicable to the Rhodes landfill.

The complaint first alleges a violation of Rule 2.02 of the Land Rules and of Section 12(a) and (b) of the Act. Rule 2.02 relates to landfill sites that are subject to flooding. Such sites are to be avoided, if possible. The record clearly shows that the area in question has been subject to flooding in the past when the Sangamon River has overflowed its banks (R. 297,343). Water was observed adjacent to the site in a ravine which leads to the river (R. 59).

According to the rules, sites already located in areas which may be subject to flooding are to be protected by dikes. Reference was made to the existence of a dike although its adequacy was not established (R. 56). Respondent did install a floodgate at the recommendation of an Agency inspector (R. 293). There was testimony that on several occasions this gate was held open by logs or brush (R. 54, 57). Mr. Rhodes admitted that this did occur in the spring of 1971 (R. 307).

The record indicates that flooding occurs less frequently now that much of the land on the site has been filled (R. 297, 343). It seems likely that flooding problems will be minimized when the floodgate is again in operation. We will therefore require that it be kept in good repair. In addition, respondent is advised to avoid operating his landfill close to the river so as not to create a water pollution hazard.

Mr. Rhodes is also alleged to have dumped refuse over a large, impractical area in violation of Rule 5.03 of the Land Rules. Certainly the record indicates that the face of the fill has at times covered quite a large area. Agency witnesses estimated the face to be as much as 600 feet long (R. 66). Adam Larimore, an inspector for the Agency, was of the opinion that 100 feet of open face is the maximum amount that one tractor operator can handle adequately (R.78). His judgment was challenged by counsel for the respondent (R. 81). We are well aware of the difficulty in arbitrarily distinguishing between "practical" and "impractical" in the sense referred to here. Nonetheless, the fact remains that respondent has failed to cover the refuse satisfactorily, as will be discussed later. We think that the large area over which refuse is dumped precludes the possibility of proper covering. We find that respondent is in violation of Rule 5.03.

Respondent is charged with violating Rule 5.07 of the Land Rules by failing to cover all exposed refuse at the end of each working day. Violations were clearly shown. Agency witnesses testified that on several occasions daily cover was not provided (R. 33, 34, 183, 240). Mr. Rhodes admitted that cover was not always provided because of insufficient cover material or bad weather (R. 287, 290).

The complaint further alleges improper salvage operations in violation of Rule 5.10(d) of the Land Rules. The Rule requires that salvaged materials either be removed from the site daily or be stored such that they will not create a nuisance, rat harborage, or unsightly appearance. Mr. Rhodes indicated that certain materials were at times salvaged (R. 302) and that articles may remain on the site for a week or longer (R. 304). Agency witnesses testified that such articles were not elevated above the ground and thus created a rodent harborage (R. 60, 61, 115, 147, 160). A rat was observed by an Agency inspector during a visit to the site (R. 63), and Mr. Rhodes admitted that he had seen rats on the premises (R. 303). As we noted in EPA v. J. C. Dill, PCB 71-42, the rules do not require that salvaged naterials be elevated. Nevertheless, we agree with the contention of Agency witnesses that elevation is an effective deterrent to rodents and therefore a highly desirable operating procedure. The evidence establishes the fact that salvaged materials were neither removed nor stored so as to avoid rat harborage. We find that a violation was shown.

The final allegation concerns the deposition of refuse in standing water, contrary to Rule 5.12(c) of the Land Rules. There is evidence that refuse was observed in water flowing through the ravine mentioned

previously (R. 59, 178). However, the Rule requires proof that refuse was put into the water. In the absence of additional information concerning the flow characteristics of the water in the ravine we cannot know whether or not water was present at the time the refuse was deposited The record is simply inconclusive in this regard. We find that no violation has been established.

One additional matter deserves comment. Counsel for both complainant and respondent suggested in their closing statements that the Board consider modifying its procedural rules so as to allow negotiated settlements or compromises between the litigants (R. 347, 349, 350). The hope was expressed that such compromises would considerably shorten proceedings of this type and reduce costs. We agree that a reduction in the time and expense of litigation is a desirable goal. Counsel for the respondent specifically suggested that the Board grant to the Attorney General some authority to negotiate such agreements (R. 350). This requires no action by the Board because the Attorney General already has such authority under Section 333 of the Procedural Rules of the Board which states:

> All parties to any case in which a settlement or compromise is proposed shall file with the Board a written statement, signed by the parties, or their authorized representatives, outlining the nature of, the reasons for and the purposes to be accomplished by the settlement.

It was further suggested that the hearing officer be granted additional powers and authority. The Environmental Protection Act, Section 33, explicitly charges the Pollution Control Board with responsibility for examining the record and rendering decisions. There is no provision for delegating additional responsibility to the hearing officer.

To summarize, we find violations with respect to inadequate protection against flooding, dumping over a large, impractical area, failure to provide daily cover, and improper salvaging. We shall order that no further infractions occur and assess a penalty for past violations of \$1500.

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

ORDER

- Charles R. Rhodes shall cease and desist from violations of the Rules and Regulations for Refuse Disposal Sites and Facilities as follows:
 - a) The floodgate near the landfill site shall be kept in good repair and in an operational condition at all times.
 - Dumping of refuse shall be confined to the smallest practical area.
 - c) Refuse shall be covered daily as required by the Rules.

- d) Salvaging shall be carried out in a sanitary manner, salvaged materials being removed from the site daily or properly stored as required by the Rules.
- 2. Charles R. Rhodes shall within 35 days after receipt of this order pay to the State of Illinois the sum, in penalty, of \$1500.

I concur

I dissent

I, Regina E. Ryan, Clerk of the Pollution Control Board, certify that the Board adopted the above Opinion and Order this 16 day of September , 1971.

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