

ILLINOIS POLLUTION CONTROL BOARD  
October 28, 1971

ENVIRONMENTAL PROTECTION AGENCY )  
 )  
 v. ) PCB 71-89  
 )  
 ELI AMIGONI )

Prescott Bloom, attorney for the Environmental Protection Agency  
Eli Amigoni, appeared pro se

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

A complaint was filed against Eli Amigoni by the Environmental Protection Agency ("Agency"), alleging that he allowed the open burning of refuse, the open dumping of refuse, the disposal of refuse in standing water, and scavenging at his refuse disposal site in Woodford County, Illinois. The alleged acts constitute violations of various provisions of the Environmental Protection Act ("Act") and of the Rules and Regulations for Refuse Disposal Sites and Facilities ("Land Rules").

The Amigoni landfill has been the subject of a previous complaint (EPA v. Eli Amigoni, PCB 70-15, February 17, 1971). In that case we found that Amigoni had illegally operated a refuse disposal facility and had allowed open burning of refuse. Amigoni had also filed a petition for variance, requesting 90 days in which to continue violating rules and regulations with respect to compacting and covering. The variance was denied (EPA v. Eli Amigoni, supra). Amigoni was ordered to cease and desist violations of the regulations and to pay a penalty of \$1500. In the event he decided to cease operations on the site, Amigoni was to provide final cover within six months of the final placement of refuse, pursuant to Rule 5.07(b) of the Land Rules. In its present complaint the Agency alleges that Amigoni has violated the terms of that order by continuing to pollute the air, land and water in the area. The Agency asks for the entry of a new order permanently closing the site, requiring complete cleanup and final cover, and assessing a money penalty.

The complaint alleges violations of the regulations on specified dates in March, 1971, only. At the hearing an Agency witness also testified as to his observations on July 29 and 30, 1971. The hearing officer correctly ruled that his observations with regard to the latter dates were outside the scope of the complaint and refused to accept them as evidence. The testimony was received only as an offer of proof. The admission of such testimony as evidence would clearly deprive Amigoni of his right to adequate notice. We will not consider testimony offered by the Agency with regard to the dates of July 29 and 30, 1971.

The first allegation concerns the open burning of refuse in violation of Section 9(c) of the Act and of Rule 3.05 of the Land Rules. Agency inspectors testified that on March 31, 1971, they observed a "small" amount of smoke rising from the ground (R. 9, 42). No flame was observed, nor was there any other evidence of open burning (R. 43, 10). Granted that the presence of smoke is clear evidence of burning, the extent of such burning in the instant case was slight and the problem would appear to be a minor one. The evidence is insufficient to warrant our finding a violation of the regulations with regard to open burning.

The complaint next alleges the open dumping of refuse in violation of Section 21(b) of the Act and of Rules 3.04, 5.02, 5.06 and 5.07 of the Land Rules. The Agency submitted a number of photographs taken March 30 and 31, 1971, purporting to show that refuse at the Amigoni site had not been properly spread and compacted or covered (EPA Ex. 2-6). Amigoni testified that upon being denied a variance by the Board in the previous case he had attempted to close the landfill site (R. 70). He stated that no putrescible wastes had been received since the first of the year (R. 78). Amigoni asserted that the refuse was receiving final cover at about the time the Agency inspectors visited and photographed his site (R. 71). Furthermore, Amigoni testified that the refuse depicted in some of the photographs was not on his property but on that of his neighbor who also operates a landfill (R. 71). This was not refuted by the Agency. Under the circumstances we do not feel the Agency has proved its case. Certainly the terms of our previous order allowed Amigoni six months in which to provide final cover in the event he decided to close the site. Amigoni had reason to expect that he would be allowed a reasonable amount of time in which to either comply with the rules or cease operations. We note, however, that a considerable amount of refuse which Amigoni admitted was on his property had not been covered at the time the photographs were taken (EPA Ex. 3-5). We will require that all refuse receive final covering in accordance with the rules.

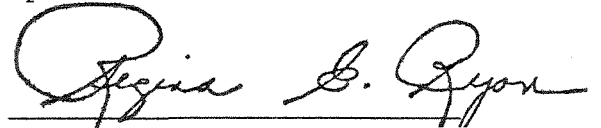
The Agency further alleges that Amigoni caused or allowed refuse to be dumped into standing water, in violation of Rule 5.12(c) of the Land Rules. An Agency witness testified that he observed refuse in standing water on both the north and south sides of the access road (R. 42). Photographs submitted by the Agency clearly show refuse in standing water (EPA Ex. 3-5). However, Amigoni testified that the water impounded on the north side of the road was not on his property (R. 75). He further stated that the water on the south side of the road was present only after a rain (R. 76). There is no evidence in the record that the water was present before the refuse was dumped. We find no violation of Rule 5.12(c).

Respondent is also alleged to have caused or permitted scavenging at the landfill site in violation of Rule 5.12(a) of the Land Rules. Agency witnesses testified that on one occasion they saw two persons sorting through refuse at the fill face (R. 16, 35). A picture of these persons was submitted as evidence (EPA Ex. 1B). The picture, however, indicates that the scavenging was occurring in an area which Amigoni testified was not his property (R. 78), a statement which the Agency did not contest. We find that no violation has been proved.

In summary, we find that none of the charges alleged by the Agency is established by the evidence. Amigoni is of course still bound by our earlier order. The complaint is dismissed for want of proof.

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

I, Regina E. Ryan, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order this 28 day of October, 1971.



Regina E. Ryan