

ILLINOIS POLLUTION CONTROL BOARD
August 3, 1978

PEOPLE OF THE STATE OF ILLINOIS)	
and ENVIRONMENTAL PROTECTION)	
AGENCY,)	
)	
Complainants,)	
)	
v.)	PCB 76-316
)	
SOUTH DUPAGE AUTO SALVAGE, INC.,)	
an Illinois corporation,)	
)	
Respondent.)	

LORETTA WEBER AND SUSAN SHUMWAY, ASSISTANT ATTORNEYS GENERAL,
APPEARED ON BEHALF OF COMPLAINANTS.
ROBERT DUFFY, DONAHUE & DUFFY, APPEARED ON BEHALF OF
RESPONDENT.

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

This matter comes before the Board upon a Complaint filed by the People of the State of Illinois on December 12, 1976, against South DuPage Auto Salvage, Inc. Amended Complaints were filed on January 31, 1977; March 16, 1977, adding the Environmental Protection Agency as Complainant; and, final amendments on June 8, 1977. The Amended Complaint as filed June 8, 1977, charged that on four separate occasions Respondent caused or allowed open burning in violation of Section 9(c) of the Environmental Protection Act (Act) and Rule 502 of Chapter 2: Air Pollution Regulations. The Complaint further alleged that Respondent operated a solid waste site without a permit in violation of Section 21(b) of the Act and Rule 202(b)(1) of Chapter 7: Solid Waste Regulations; that Respondent failed to apply daily or final cover in violation of Section 21(b) of the Act and Rules 305(a) and (c) of Chapter 7; and that Respondent's deposits of refuse constitutes a water pollution hazard in violation of Section 12(d) of the Act.

During the course of discovery, Complainant filed with the Board a Request for Admission of Facts on January 31, 1977, which was served upon Respondent without a reply within the 20-day period required under Procedural Rule 314(c) (Chapter 1). Complainants also filed with the Board a Motion

for Costs on December 1, 1977, and a Motion for Costs and Sanctions on January 17, 1978, which were held for decision with this case.

Hearings were held in this matter on February 14, 1978, and on June 14, 1978, in Wheaton, Illinois. In the first hearing, the Complainants presented certain evidence and exhibits supporting their prima facie case in lieu of a lengthy written statement in a Settlement Agreement. During the June 14, 1978, hearing, the parties submitted to the record a Stipulation and Proposal for Settlement which had been filed with the Board on April 23, 1978. The Agreement records Respondent's admissions of all violations in the Third Amended Complaint (Stip. 11, R. 110) and Complainants' agreement to withdraw all motions including motions for costs pending in this matter (Stip. 13, R. 113). The Board will accept these agreements and will terminate further consideration of Complainants' Requests for Admission and other motions.

The Stipulation indicates that Respondent operates an auto salvage yard which disassembles and stockpiles parts from junked automobiles. The site is bordered on the south by land owned by the Metropolitan Sanitary District of Greater Chicago (MSD). Immediately south of the MSD plot lies the DesPlaines River (Stip. 2, R. 100).

At the hearing, Complainants presented the testimony of three Agency field investigators on inspections of Respondent's auto salvage yard and the land and waters in the vicinity of the site from May 27, 1976, through September 8, 1977. On five separate occasions the investigators discovered refuse including tires, tire rims, trailer hulls, jagged metal and other debris deposited without cover material in Respondent's salvage yard on MSD's land, in the DesPlaines River and on its bank (R. 25-27, 34-47, 39-40). The investigations also revealed burned materials on Respondent's site (R. 27, 52, 60). Linda Staton, an Agency Specialist in the Division of Water Pollution Control, observed the deposits of refuse along the banks of the DesPlaines River during two inspections of the site and concluded that the refuse constituted a water pollution hazard (R. 57-59).

Other witnesses testified about the frequent fires which occurred at Respondent's auto salvage yard. Chief Thomas Nelson, of the Tri-State Fire Department, stated that he was called to three fires consisting of burning tires and car seats on April 10, 1976, on December 10, 1976, and on April 11, 1977 (R. 84, 88, 91). On April 11, 1977, heavy smoke from fires on Respondent's site forced the closing of a nearby

highway (R. 91). Fireman Charles Quillan testified that three separate fires occurred on December 2, 1976, at Respondent's site in piles of tires and car seats (R. 66, 70). Mr. Quillan also stated that the entrance way was temporarily blocked by a junked auto placed there by an employee of the Respondent (R. 65, 72).

The Board finds that the evidence presented in the record are sufficient to support a finding that Respondent's salvage yard was in violation of Section 9(c) of the Act and Rule 502 (Chapter 2) for causing or allowing open burning on April 10, 1976, December 2, 1976, December 10, 1976, and April 11, 1977; and that Respondent was in violation of Section 21(b) of the Act and Rules 305(a) and (c) for failing to apply daily and final cover to its non-auto salvage refuse. The parties also agree to violations of Rule 202(b)(1) of Chapter 7 and Section 21(b) which the Board will accept for purposes of this proceeding.

PROPOSAL FOR SETTLEMENT

The Respondent has agreed to cease and desist from all further violations of the Act and Rules. This includes stipulations to clear all refuse off the land owned by the MSD and to remove all debris in the DesPlaines River in the vicinity of Respondent's site within 60 days of this Board Order. Respondent further agrees to remove all non-auto salvage refuse from its site and to dispose of the stockpiles of automobile tires in a lawful manner within the same 60-day time period. In addition, Respondent will obtain a surety bond within 45 days of the Board Order which would be forfeited in the event that an open burning violation occurred at the auto salvage site within the next three years (Stip. 10-12).

South DuPage Auto Salvage, Inc. has agreed to pay a penalty of \$5,000 within 35 days of this Order. The Board has considered the Section 33(c) factors in assessing a penalty for these violations, and finds that it is reasonable and acceptable. The Board will accept the Stipulation and Proposal for Settlement and will require that the parties adhere to all provisions contained therein.

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

ORDER

1. South DuPage Auto Salvage, Inc. is hereby found to have violated Sections 9(c), 12(d) and 21(b) of the Environmental Protection Act and Rule 502 of Chapter 2: Air Pollution Regula-

tions and Rules 202(b)(1), 305(a) and 305(c) of Chapter 7: Solid Waste Regulations.

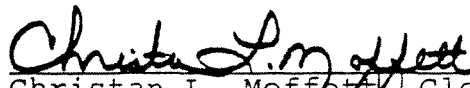
2. Respondent shall fully comply with all the provisions of the Settlement Proposal which is hereby incorporated by reference as if fully set forth herein.

3. Respondent shall pay a penalty of \$5,000 for its violations of the Act and the Air Pollution and Solid Waste Regulations payable within 35 days from the date of this Order to:

State of Illinois
Attorney for Complainants
Environmental Control Division
188 West Randolph, Suite 2315
Chicago, Illinois 60601

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 3RD day of August, 1978 by a vote of 5-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board