

ILLINOIS POLLUTION CONTROL BOARD
August 22, 1972

ENVIRONMENTAL PROTECTION AGENCY,)
)
 Complainant)
)
 v.) PCB 72-130
)
 OTTO E. DOBBEKE, JR., BOLINE)
 OLSON, JAMES SCHOENHARD,)
 Whiteside County Highway)
 Superintendent, HARRY HURD, JR.,)
 Tampico Township Supervisor, and)
 FRANK CALSYN, Tampico Township)
 Road Commissioner,)
)
 Respondents)

George D. Karcazes, Assistant Attorney General for the EPA
William E. Arnold for Respondent Otto E. Dobbeke, Jr.
Frank Calsyn, pro se

OPINION AND ORDER OF THE BOARD (by Mr. Henss)

Respondents are charged with violating the Environmental Protection Act and the Rules and Regulations for Refuse Disposal Sites and Facilities in that they "caused or allowed" the open dumping of refuse at a landfill near Tampico, Illinois. Prior to the introduction of evidence, the EPA moved to dismiss the action as to Respondents Boline Olson, James Schoenhard and Harry Hurd, Jr. The evidence did not indicate that these three Respondents owned the land upon which the landfill was located or connect them in any way to the dumping operations. The motion is allowed and the action is dismissed as to Respondents Boline Olson, James Schoenhard and Harry Hurd, Jr.

The evidence clearly proved that open dumping of refuse took place over a period of years upon land owned by Respondent Otto Dobbeke, Jr. The dump is located along a country gravel road. An investigator for the EPA, sometimes accompanied by an investigator for the Whiteside County Health Department, visited the site on ten dates from September 25, 1970 to July 20, 1972 the date of the hearing. He took photographs of the piles of refuse on several occasions.

Respondent Frank Calsyn, the Township Road Commissioner, testified that he maintained the gravel road and that the dump

had been used for "a good many years". It was not an authorized dumping location and as Township Road Commissioner, Calsyn had over the years posted many signs stating that dumping was illegal. In April, 1972 Calsyn dug a trench beside the road with the blade of his roadgrader in an attempt to keep people from the dumping site. The posting of signs and the digging of the trench by the township was with the consent of Respondent Dobbeke. The EPA investigator stated, and photographs show, that a "No Dumping" sign was visible at the scene.

There is no evidence that Respondent Dobbeke ever dumped refuse at the site or affirmatively authorized others to do so. Dobbeke denies that he personally used the site for dumping but was aware that other people did. Occasionally people would come to his door and ask permission for dumping. Dobbeke states that he always told them he did not have authority to grant the permission. The landfill cannot be seen from the Dobbeke house and in all the years that dumping occurred there Dobbeke saw only one person in the act of depositing refuse on his land. Respondent did not report that person to the sheriff's department since the trespasser was "on State aid". Because of his fear of reprisals Dobbeke did not ever attempt to get license numbers or report illegal dumping to the sheriff's office.

The issue is whether Respondents "caused or allowed" the open dumping. We believe that on the facts of this case, Respondent Otto Dobbeke, Jr. did "allow" open dumping within the meaning of the statute. Ill. Rev. Stat. C. 111½, Section No. 1021 (b). The dump existed for many years and a considerable quantity of refuse is shown to have accumulated. Although Mr. Dobbeke denies encouraging the illegal dumping his course of conduct as the owner of the property seems rather passive. He did not build a fence. Not once did he call the sheriff. Such inaction by the owner of the land implies acquiescence and is hardly calculated to put a halt to the illegal dumping. We believe that Mr. Dobbeke's conduct is not serious enough for the imposition of monetary penalties but does require an order directing affirmative action to halt the dumping.

Respondent Frank Calsyn did take some affirmative action to prevent the illegal dumping and we find him Not Guilty. He posted "No Dumping" signs and he tried to reduce access to the site by digging a ditch along the road. It will take more than this to reverse dumping habits of long standing, and we suggest that the township road commissioner could also have requested a sheriff's patrol in the area. However, we cannot find from the conduct of Respondent Frank Calsyn that he "allowed" illegal dumping.

ORDER

Respondent Otto E. Dobbeke, Jr. is adjudged guilty of allowing open dumping on his property and Frank Calsyn is adjudged not guilty

of the charges brought against him.

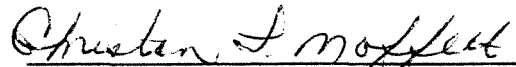
It is ordered that:

(1) Respondent Otto E. Dobbeke, Jr. cease and desist from allowing open dumping on his property.

(2) Respondent Otto E. Dobbeke, Jr. construct a suitable fence for the purpose of barring access by the public to the dumping site.

(3) No monetary penalty shall be assessed.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 22nd day of August, 1972 by a vote of 5-0.


Christan L. Moffett, Clerk
Illinois Pollution Control Board