

ILLINOIS POLLUTION CONTROL BOARD  
June 7, 1973

ENVIRONMENTAL PROTECTION AGENCY )  
 )  
 ) #73-76  
 v. )  
 )  
 ORVAL L. GEARHART, JR. )

ALAN R. MILLER, SPECIAL ASSISTANT ATTORNEY GENERAL, APPEARED ON  
BEHALF OF ENVIRONMENTAL PROTECTION AGENCY  
TOMAS M. MAGDICH, APPEARED ON BEHALF OF RESPONDENT

OPINION AND ORDER OF THE BOARD (BY SAMUEL T. LAWTON, JR.):

Respondent is charged with operating a refuse disposal site without a permit in violation of Section 21(e) of the Environmental Protection Act, with the causing or allowing of open dumping of garbage in violation of Section 21(a) of the Environmental Protection Act and Rule 3.04 of the Rules and Regulations for Refuse Disposal Sites and Facilities and causing or allowing the open dumping of refuse, in violation of Section 21(b) of the Act and the above Rule. Additionally, Respondent is charged with violation of Rules 4.01 and 5.05 in failing to provide sufficient equipment in the operation of a landfill, Rule 5.06 in failing to spread and compact refuse and Rule 5.07(a) in failing to provide daily cover. The period of the alleged violation begins on July 1, 1970 and continues to the date of the filing of the complaint, which was February 23, 1973.

Specified dates of violation include, but are not limited to, December 16, 1971, March 1, 1972, April 17, 1972, April 18, 1972 and August 3, 1972. The subject property is located in Lee County on the flood plain of Plum Creek.

Answer was filed by Respondent denying the material allegations of the complaint. Hearing was held in Dixon, Illinois, on April 19, 1973. Ownership of the subject property is acknowledged by Respondent (R. 20). Respondent operates a bowling alley approximately one-eighth of a mile from the site involved. Photographs introduced as exhibits by the Agency, taken on April 17, 1972 and April 18, 1972, depict the condition of the property, showing empty tin food and beverage containers, paper crating, loose lumber, metal and trash. While it is conceivable that some of this rubbish was placed on the property prior to

July 1, 1970, Respondent and his son acknowledge that tin beverage containers continued to be dumped on the site until September of 1970 when Respondent became aware that the Environmental Protection Act prohibited such activities and commenced using a landfill in Dixon for disposal of the refuse generated from the bowling alley. The suggestion is also made that this dumping was caused by strangers and without the permission of Respondent. Inspections made on December 16, 1971, April 17 and April 18, 1972 and August 3, 1972 indicate the continuation of the same obnoxious operation. The suggestion is also made that the proximity of the stream resulted in trash perhaps floating from other sources ending up on Respondent's property. We find this contention singularly unpersuasive. Paint cans, antennas and a coke cooler are acknowledged to have been dumped on the property.

We believe the Agency has established its burden of proof, which has not been rebutted by Respondent's testimony or legalistic interpretations as to the characteristics of the refuse. Respondent has operated a promiscuous dump without a permit, has violated the provisions with respect to both open dumping and garbage and has failed to take the necessary procedural steps with respect to compacting and cover.

In view of the relatively small size of the operation and the apparent absence of significant environmental damage, we will impose a small penalty in the amount of \$250.00. We will direct the Respondent to cease and desist the violation of all relevant regulations and statutory provisions with respect to the operation of a dumping site within 30 days from the date of this Order. To the extent dumping is resulting from the actions of others without Respondent's consent, Respondent must take affirmative steps to prevent such recurrence.

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

IT IS THE ORDER of the Pollution Control Board:

1. Penalty in the amount of \$250.00 is assessed against Orval L. Gearhart, Jr. for operation of a refuse disposal site without a permit, in violation of Section 21(e) of the Environmental Protection Act, for the causing or allowing of the open dumping of garbage, in violation of Section 21(a) of the Act and Rule 3.04 of the Rules and Regulations for Refuse Disposal Sites and Facilities, for the causing or allowing of the open dumping of refuse in violation of Section 21(b) of the Act and Rule 3.04, for the failure to provide sufficient equipment in the operation of a landfill in violation of Rule 4.01 and Rule 5.05, for the failure to properly spread and compact in

violation of Rule 5.06, and for failure to apply daily cover in violation of Rule 5.07(a). The violations are found to be continuing violations commencing on or about July 1, 1970 and having occurred specifically on December 16, 1971, April 17, 1972, April 18, 1972 and August 3, 1972. Penalty shall be made by certified check or money order payable to the State of Illinois and made to: Fiscal Services Division, Illinois Environmental Protection Agency, 2200 Churchill Drive, Springfield, Illinois 62706, within 30 days from the date of this Order.

2. Orval L. Gearhart, Jr. is ordered to cease and desist all violations of the relevant Regulations and statutory provisions with respect to the operation of a refuse disposal site and facility.

I, Christan Moffett, Clerk of the Illinois Pollution Control Board, certify that the above Opinion and Order was adopted on the 7<sup>th</sup> day of June, 1973, by a vote of 4 to 0.

