

ILLINOIS POLLUTION CONTROL BOARD
October 31, 1972

ENVIRONMENTAL PROTECTION AGENCY)
)
) #71-293
 v.)
)
 15TH STREET AUTO PARTS and)
 CLARENCE HUTCHINSON)

JOHN W. LESKERA, ASSISTANT ATTORNEY GENERAL, ON BEHALF OF THE
ENVIRONMENTAL PROTECTION AGENCY
MICHAEL CONSTANCE, ON BEHALF OF RESPONDENT

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

Complaint, later amended, was filed against 15th Street Auto Parts and Clarence Hutchinson, its owner, alleging that on June 5, June 10, June 28 and September 28, 1971, and July 12, 1972, Respondent conducted an auto salvage business in violation of Section 9(c) of the Environmental Protection Act, by causing, permitting or allowing the open burning of automobiles. Complainant further alleges that on those dates, the operation of the facility caused, threatened or allowed the discharge of large quantities of dense black smoke, so as to cause or tend to cause air pollution, either alone or in combination with contaminants from other sources in violation of Section 9(a) of the Act (Ill. Rev. Statutes, 1971, Chapter 111-1/2, Sec. 1009).

Hearings were held in East St. Louis on November 24, 1971 and continued until September 28, 1972. Such an inordinate delay is without explanation, and contrary to approved practice before the Board. See Environmental Protection Agency v. Acme Solvents Reclaiming, Inc., et al, #72-288, 5 PCB , (Oct. 17, 1972.)

Respondent operates an auto salvage yard within the corporate limits of East St. Louis. During the period covered by the complaint, Respondent salvaged parts from autos by means of both acetylene torches and mechanical apparatus. In this operation, certain parts of the car are removed and segregated for sale or other disposal, including the body and frame, seats, tires, wheels and engine block.

Environmental Protection Agency witnesses testified to observations of open burning on June 10, 1971, June 28, 1971 and July 12, 1972 (11/24/71 R.16 and following, R. 24 and following) (9/28/72 R.5 and following). Respondent concedes that fires occurred on

each of these occasions although disagrees as to the extent and intensity (9/28/72 R.47). The evidence with respect to the June 10, 1971 fire is meager, a member of the local fire department merely testifying that the department was called and the fire was extinguished in less than an hour. The fire of June 28, 1971 was extensive, requiring six hours to extinguish. (11/24/71 R.16). Black smoke billowed 300 or 400 feet into the air (11/24/71 R. 26) and flames were estimated to be six to eight feet in height. Several cars were observed burning on this occasion. (11/24/71 R. 28). A pile of rubber tires caught fire and smoke having Ringelmann opacity of 5 was observed. (11/24/71 R.26). On July 12, 1972, another fire took place at which the fire department was at first denied access, and later permitted on the premises to extinguish it. This fire appeared to involve tires, and car seats that had been segregated and spread to include other automotive parts. (9/28/72 R.11). Dense black smoke and flames ten to twelve feet high were observed (9/28/72, R. 16).

Respondent contends that the fires have either been caused by vandalism or the use of acetylene torches which have now been discontinued. (9/28/72, R.47 and 56). Respondent concedes awareness that open burning was prohibited on the occasions when the fire took place (9/28/72, R.30) and that he had been told by representatives of the Environmental Protection Agency that his method of storing parts and tires created a fire hazard (9/28/72, R.47). Respondent's offenses are due to his negligent method of conducting his salvage operation and the manner in which materials, including those of an inflammable nature are arranged within his yard. Respondent has now segregated his operation from the adjacent property and has erected a new fence. He has also stated that he will take improved measures in the policing of his yard to prevent any recurrence. We have held in previous cases that negligent conduct of a salvage operation is sufficient to establish violation of Section 9(c) of the Act. See Environmental Protection Agency v. Neal Auto Salvage, #70-5, 1 PCB 71 (Oct. 28, 1970), Environmental Protection Agency v. J. M. Cooling, #70-2, 1 PCB 85, (Dec. 9, 1970), Environmental Protection Agency v. Jesse W. Farley, Sr., #72-267, 5 PCB _____, (Oct. 31, 1972). Furthermore, conduct necessitating repeated calls for the local fire department constitute a violation of Section 9(a) of the Act, with respect to the causing of air pollution as defined in the Act. Fires necessitating employment of a municipal fire department to the extent caused by the Respondent clearly constitutes an interference with the enjoyment of life and property by others in the community. Furthermore, the evidence sustains the fact that the salvage yard is in the immediate vicinity of a housing project, whose residents have undoubtedly been affected by the sloppy operation of Respondent's business.

We find that Respondent, by his negligent and indifferent operation, has conducted his auto salvaging business in violation of

Sections 9(c) and 9(a) of the Environmental Protection Act, with respect to open burning and the causing of air pollution. We assess a penalty in the amount of \$1,000 and order Respondent to cease and desist the operation of his business, in violation of the statute and regulations. The intensity of the fires, the general sloppiness of the operation and the possible dangers to adjacent properties calls for the imposition of a penalty in excess of that assessed in Environmental Protection Agency v. Farley, supra, decided this day.

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

IT IS THE ORDER of the Pollution Control Board that:

1. Respondent cease and desist the operation of his auto salvaging facility in violation of the Environmental Protection Act and the Rules and Regulations Governing the Control of Air Pollution.
2. Penalty in the amount of \$1,000 is assessed against Respondent for violation of Sections 9(c) and 9(a) of the Environmental Protection Act, as found in this proceeding. Payment shall be made within 35 days, by certified check or money order made payable to the State of Illinois and sent to: Fiscal Services Division, Illinois Environmental Protection Agency, 2200 Churchill Drive, Springfield, Illinois 62706.
3. Respondent shall take affirmative steps to secure entrance to his salvage yard against trespassers; such steps shall have the approval of the Environmental Protection Agency. Respondent shall permit representatives of the Environmental Protection Agency to enter his premises at reasonable hours for inspection of the facilities to determine whether the operation is in compliance with the applicable statutory and regulatory provisions.

I, Christan Moffett, Clerk of the Illinois Pollution Control Board, certify that the above Opinion and Order was adopted on the 31st day of October, 1972, by a vote of 5 to 0.

Christan L. Moffett

