

ILLINOIS POLLUTION CONTROL BOARD
January 16, 1973

ENVIRONMENTAL PROTECTION AGENCY)
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)
 v.) #71-299
)
)
 GEORGE ROSENBALM, d/b/a MOUNT MORRIS)
 SANITATION SERVICE)

Lee A. Campbell, Assistant Attorney General, on behalf of
Environmental Protection Agency

William Gunner on behalf of Respondent

Opinion and Order of the Board (by Mr. Lawton):

Respondent is the operator of a refuse disposal site located on the St. Clair farm, about four miles east of Mount Morris in Ogle County. He began operations at the site in September, 1964 on five or six acres of the farm, primarily serving the residents of Mount Morris and nearby industries. Complaint was filed on October 1, 1971 alleging numerous infractions of the Environmental Protection Act (Ill. Rev. Stat. 1969, Ch. 111 1/2), hereinafter called the "Act" and the Rules and Regulations for Refuse Disposal Sites and Facilities, hereinafter called the "Refuse Rules," at the site, including the conduct of operations without a permit, open dumping of garbage and refuse on eight separate occasions, failure to properly spread and compact refuse on six occasions, failure to properly cover the refuse on eight dates, open burning of refuse on three dates and the deposition of contaminants on the land in such a manner as to create a water pollution hazard. The first hearing was held on January 17, 1972 whereupon the complaint was amended to include the additional charge of failing to confine dumping operations to the smallest practicable area on eight dates; the second and final hearing was held over ten months later, on November 21, 1972,* and we can only presume that the inordinate delay was brought about by the Board's monetary shortage and an unwillingness on the part of the complainant to assume the court reporting costs while such condition existed.

Although the site was registered as early as 1968 with the Illinois Department of Public Health, no operating permit had ever been obtained and Respondent admitted he "didn't know (he) was supposed to have a permit." (1R. 16).

*Record references herein shall be as follows: 1R, followed by a page number shall refer to the record of the Jan. 17 hearing; 2R followed by a page number shall refer to the record of the Nov. 21 hearing.

Evidence indicated that inspections as early as 1966, and continuing through 1970 revealed the existence of uncovered refuse, junked cars and exposed appliances at the site (1R. 136-159) Respondent was informed of the possibility of groundwater contamination attributable to his operations (1R. 178) and was requested by the Environmental Protection Agency on several occasions to close the site down (1R. 82-106, 178-180; 2R 145).

As to the specific violations charged in the complaint, we find the evidence supports the allegations as follows:

- 1) September 29, 1970: open burning of refuse (1R. 167-168, 181-182; EPA Ex. #22A & B); failure to properly spread, compact or cover refuse (1R. 167-168); failure to confine dumping to smallest practicable area (1R. 176);
- 2) January 12, 1971: open burning of refuse, failure to properly spread, cover and compact refuse and garbage, or to confine refuse to the smallest practicable area (2R. 28-33), open dumping of refuse and garbage (2R. 28), open burning (2R. 30);
- 3) February 8, 1971: open dumping of garbage and refuse, failure to properly spread, compact or cover refuse, or to confine dumping to the smallest practicable area (2R. 35-36);
- 4) March 23, 1971: open dumping of garbage and refuse, failure to properly spread, compact or cover refuse, or to confine dumping to the smallest practicable area (2R. 38-44);
- 5) May 19, 1971: open dumping of refuse and garbage, failure to properly spread, compact or cover refuse, or to confine dumping to the smallest practicable area, deposition of liquid or hazardous substances on the land without permission so as to create a groundwater contamination hazard (2R. 46-47).
- 6) June 2, 1971: open dumping of garbage and refuse, failure to properly spread, compact or cover refuse (2R. 48-49);
- 7) June 21 and 22, 1971: open dumping of refuse and garbage, failure to properly spread, compact or cover refuse (1R. 117-133; EPA Ex. #16-A through J).

Respondent appeared pro se at the first hearing but was represented by counsel at the second. At the commencement of the second hearing, counsel for Respondent raised several objections relating to amendments on the face of the complaint which had been made at the first hearing, as well as to the constitutionality of the Act and the Board. The latter we have considered and dismissed on several occasions in the past (cf. EPA v. Granite City Steel Co., #70-34, March 17, 1971; EPA v. Modern Plating Corporation, #70-38, 71-6, May 3, 1971). As to the former, the

first hearing was conducted nearly three and one-half months after the complaint had been filed, and Respondent had been afforded ample opportunity to secure counsel. In any event, the exceedingly long delay between the first and second hearings on these charges made moot any objections based upon the inability of Respondent to adequately investigate and prepare to meet the numerous allegations in the complaint. Nevertheless, we caution the Agency and its representatives to avoid unfair, omnibus pleadings which either intend to sweep within its purview prospective violations which may occur subsequent to the filing of the complaint, or are so vague and indefinite as to fail to give the Respondent fair notice of the specific dates of alleged infractions of the law so as to enable him to properly prepare a defense. It is not difficult to list the dates of the alleged violations, or to amend the complaint, giving proper notice of such amendments as prescribed by the Board's Procedural Rules, where additional infractions are found and are to be proven up by the Agency at the hearing. But to affix to the allegations of violations on specific dates as listed in the original complaint additional alleged violations supposedly occurring from a date certain in the past up to and through the close of the record in the case is exceedingly unfair and entirely unnecessary. Cf. EPA v. Mystik Tape, #72-180, PCB, January 16, 1973. Therefore, the testimony of Mr. Pritchard relating to alleged violations occurring on seven dates subsequent to the date of the complaint will not be considered by the Board (2R. 65-91).

The record in this case indicates that, after much urging by the Agency, Respondent closed the site on June 30, 1971 (1R. 97-105, 2R. 93) and that final cover was completely applied by October, 1971 (1R. 107, 110, 112). Evidence further indicated that while a certain amount of uncovered materials still exist at the site (2R. 89-91), the general condition has substantially improved (2R. 117, 120-129). We are somewhat distressed by the fact that the original complaint in this case was filed some three months after the site had been closed, and related to violations which had occurred more than one year earlier, although some violations did occur during the month the site was closed. But the difficulty and potential unfairness inherent in such delays was exacerbated by the more than ten months separating the first and second hearings into this matter. As a result, the hearings which concluded in November, 1972 dealt partially with alleged violations which had occurred more than two years before; and due to internal difficulties at the Board, the date of this decision renders the remedy even more remote to the offense than that. Surely the Agency and the Attorney General can speed up the time between detection and prosecution of pollution violations so as to avoid the possibility of unfairness which so obviously existed in the present case.

Taking all of the above problems into consideration, we are inclined to dismiss the proceedings without penalty but we do believe it important not to let clear violations of the laws

and regulations pertaining to landfill sites go unpunished. For this reason and as a deterrent to others, we will impose a nominal penalty of \$300 for the violations found herein.

The above constitutes the Board's findings of fact and conclusions of law in this matter.

ORDER

1. Respondent Rosenbalm shall pay to the State of Illinois, within thirty days of the date of receipt of this Order, the sum of \$300.00 as penalty for the violations found in this proceeding. Payment shall be made by check or money order payable to the State of Illinois, and shall be sent to "Fiscal Services Division, Environmental Protection Agency, 2200 Churchill Road, Springfield, Illinois 62706."

I, Christan Moffett, Clerk of the Pollution Control Board, certify that the Board adopted the above Opinion and Order this 10th day of January, 1973, by a vote of 3-0.

Christan R. Moffett
Clerk