ILLINOIS POLLUTION CONTROL BOARD August 29, 1972

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ENVIRONMENTAL PROTECTION AGENCY,

Complainant,

-vs-

PCB No. 72-65

EARL B. ARCHDALE,

Respondent.

INTERIM OPINION AND ORDER (by Mr. Henss)

This case is submitted to us for final decision pursuant to Stipulation of the parties, but we are unable to decide the case from the materials presented. A brief recital of what has taken place is necessary for our interim Order.

The EPA filed its complaint against Respondent Earl B. Archdale alleging that he committed numerous violations of the Environmental Protection Act and the Rules and Regulations for Refuse Disposal Sites and Facilities in his operation of a landfill in Fulton County, Illinois. The first five paragraphs of the complaint consist of allegations of law and quotations from the Statute and the Regulations. The answer filed by Respondent's attorney neither admits nor denies those allegations of law. Paragraph 6 of the complaint alleges that Respondent operated a refuse disposal site and facility and gives its legal description in Fulton County. Respondent's answer admits this allegation. Paragraphs 7 through 11 allege specific instances of open burning on six dates in 1971 and 1972 and open dumping, failure to provide vector control, and failure to spread and compact refuse on nine dates. There is an allegation that refuse was deposited in standing water on one of the dates. These allegations of fact were denied by Respondent's pleading. Paragraph 12 alleged and Respondent admitted that he was notified of the deficiencies on four occasions.

Subsequently the Agency filed its Motion to Amend Complaint, which Motion is entirely out of step with the pleadings which precede it. The Motion purports to reallege the language of Paragraph 6 (which had already been admitted) as Paragraph 1 so that the identical language regarding ownership of the landfill would be included in the complaint twice. The Motion would add to Paragraphs 2, 4, 5 and 6 by simply listing the dates: December 16, 1971, January 19, 1972, January 31, 1972, March 16, 1972 and July 18, 1972.

To permit such an amendment would add confusion since the dates do not relate to any language contained in those paragraphs.

We have tried to make sense of the pleading by experimenting with our own renumbering of the paragraphs, but the new subparagraphs do not fit very easily into any part of the original complaint. No amended complaint was in fact filed.

One week after the Motion was filed, the parties appeared for a hearing. The attorneys then entered into a Stipulation which they now submit for our decision on the merits. The Stipulation provides in part:

- "1. That the Respondent was the owner of the property referred to in Paragraph 1 of the amended complaint.
- 2. That the allegations of Paragraphs 2, 3, 4, 5, 6 and 7 of the amended complaint are true as demonstrated by the exhibits attached to this Stipulation and identified consecutively as Nos. 1 through 35, both inclusive."

It was further agreed that "the witnesses" would testify that the EPA reports and photographs were true and accurate; that Respondent desired to close the site and was a man of modest means. The parties then jointly suggested the terms of an order to be entered by this Board.

Because of the obvious desire of the parties to close this matter without further hearing, we did attempt to make our findings of fact and law from the materials which were presented to us. We find, however, that the combination of the nonsensical pleadings and the reliance upon them as a basis for the Stipulation of Facts frustrates our purpose. Any determination of facts from this record would constitute the Board's own Stipulation of Facts. We see no alternative but to return the case to the Hearing Officer for further proceedings.

The Motion to Amend is denied. An appropriate record of testimony or Stipulation of Facts shall be submitted to this Board.

I, Christan L. Moffett, Clerk of the Pollution Control Board, certify that the Board adopted the above Opinion and Order at the day of August, 1972 by a vote of $\sqrt{2}$.

mixtans Christan L. Moffett,

Illinois Pollution Control Board