

ILLINOIS POLLUTION CONTROL BOARD
September 6, 1972

ENVIRONMENTAL PROTECTION AGENCY,)
)
Complainant,)
)
vs.) PCB 72-2
)
CITY OF SALEM AND THOMAS ARNOLD)
)
Respondents.)

Larry R. Eaton, Assistant Attorney General for the EPA
Alfred Pfaff, City Attorney for Respondents

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

The Environmental Protection Agency filed its complaint against the City of Salem and Thomas Arnold alleging that they had committed numerous violations of the Environmental Protection Act and the Rules and Regulations for Refuse Disposal Sites and Facilities in the operation of a landfill near Salem, Illinois. It was charged that there had been open burning, open dumping of garbage and refuse, scavenging, failure to confine dumping of refuse to the smallest practical area, failure to provide adequate vector control, failure to properly spread and compact refuse, failure to provide daily cover or final cover, and the deposition of refuse in standing water on numerous occasions between February 1966 and January 1972. The site of these alleged violations was a twenty acre landfill owned by the City of Salem and operated by Thomas Arnold, a city employee, about two miles northeast of Salem.

The evidence introduced at the hearing dealt mainly with violations alleged to have occurred since July 1, 1970, the effective date of the Environmental Protection Act. From the record we conclude that Respondents were guilty of open dumping and failure to provide adequate daily cover on several occasions. Respondent Thomas Arnold said that he tried to cover but under cross examination admitted that photographs taken on different dates showed the existence of uncovered debris overnight. Arnold also said he "couldn't cover it everyday" (R. 42) and left demolition overnight if it arrived on the site close to the quitting hour.

Brush burning, lasting for a week at a time, occurred on four or five occasions in 1971. There was no evidence that the Respondents started the fires and it seems that all of the fires began at night. These fortuitous fires benefited Respondents by removing brush piles which Respondents would otherwise have had difficulty in covering.

Respondent Thomas Arnold testified:

"Q. So, your practice is not to cover or put the brush in the fill?

A. We always put our brush in this one place.

Q. Well, what would you do with that brush if it would never burn? You say the pile keeps getting larger.

A. Well, I guess we would just keep piling it up.

Q. You would have a big mountain of brush?

A. You've got a hundred dollar question. I don't know what you would do." (R. 121)

In our opinion the Respondents are clearly responsible because of their accumulation of the materials to be burned and failure to extinguish the fires once they started.

Scavenging occurred occasionally but was not a serious problem. The City did post "No Scavenging" signs and did chase violators away. The dump was available for the public between the hours of 8 a.m. and 5 p.m. five days per week and from 8 a.m. until noon on Saturdays. It was locked at other times.

Some leachate flowed from the site into a nearby stream. Samples from the stream indicate that the water quality did not seriously suffer from the introduction of the material.

Rats were controlled fairly well but there was no attempt to control flies.

The biggest problem with littering came from an attempt to use the area fill system in a low lying area. The trench system was used generally and cover material was close at hand. The City Manager admitted that there had been violations in the lower end of the fill based upon failure to cover on a daily basis.

The problem with this landfill operation was stated rather succinctly by the City Manager. He said.

"The history of Salem's present landfill site dates back to 1941 when it was opened--of course, then as an open dump--and it was operated for many, many years as an open dump. And when the regulations were established to convert it to a sanitary landfill, the City began to make efforts in this direction and began to make some progress, I think, despite what we're discussing here today.

But, it's very difficult to convert an open dump to a sanitary landfill. The design of the area is not very conducive to that. It's been used one way, and it's just really impossible to change it to another."
(R. 158)

Over the past year the City has attempted to locate a new landfill. Contacts were made with other units of local government but first the County Board and then the City of Centralia declined to create an area landfill. Arrangements have now been made by the City of Salem to use a landfill not operated by the City. A permit has been issued and the City has entered into a contract to use the site starting August 1, 1972. The Assistant Attorney General who prosecuted this case commended the City for having found a new disposal site.

The City has been moving toward compliance with the law. We agree that it is difficult to change the habits of the public and the long established use of the old site, and that compliance is more likely to occur at a new location. In view of the progress made by the City we believe a small penalty in the amount of \$250.00 would be appropriate along with an order for the closing of the old dumping site.

The City takes the position that we have no jurisdiction to impose a monetary penalty upon a municipality. Section 42 of the EPA provides that "any person" who violates the Act shall be liable to pay the monetary penalty. This term is broad enough to include corporations and municipalities. We adhere to our view that monetary penalties may be imposed upon municipalities. City of Springfield vs. EPA, PCB 70-55.

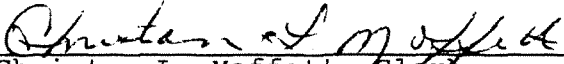
ORDER

It is ordered that:

- (1) Respondents City of Salem and Thomas Arnold cease and desist from their violations of the Environmental Protection Act and the Rules and Regulations for Refuse Disposal Sites and Facilities.
- (2) Respondent City of Salem shall close the landfill which was the subject of this hearing and shall not in the future use the site for a landfill unless a permit for doing so is first obtained from the Environmental Protection Agency. Final cover shall be applied within six months from the date of this order.

- (3) Respondents jointly or severally shall pay to the State of Illinois by October 6, 1972 the sum of \$250.00 as a penalty for the violations found in this proceeding. Penalty payment by certified check or money order payable to the State of Illinois shall be made to: Fiscal Services Division, Illinois EPA, 2200 Churchill Drive, Springfield, Illinois 62706.

I, Christan L. Moffett, Clerk of the Pollution Control Board, certify that the Board adopted the above Opinion and Order this 6th day of September, 1972, by a vote of 4-0.


Christan L. Moffett, Clerk
Illinois Pollution Control Board