

ILLINOIS POLLUTION CONTROL BOARD
November 11, 1971

ENVIRONMENTAL PROTECTION AGENCY)
)
) #71-234
 v.)
)
 FRANK COBIN, d/b/a COBIN)
 SALVAGE COMPANY)

MR. LARRY R. EATON, ATTORNEY FOR ENVIRONMENTAL PROTECTION AGENCY
MR. DONALD E. ELMORE AND MR. JAMES A. LAWDER, JR., ATTORNEYS
FOR FRANK COBIN, d/b/a COBIN SALVAGE COMPANY

OPINION OF THE BOARD (BY MR. LAWTON):

Complaint was filed by the Environmental Protection Agency against Frank Cobin, doing business as Cobin Salvage Company, which after amendment, alleges that the Respondent:

1. On, before or since July 1, 1970 and particularly on November 17, 1970, January 28, 1971, June 16, 1971 and June 23, 1971, and continuing to the present date, burned automobiles in the open in violation of Section 9(c) of the Environmental Protection Act (Act) and Rules 2-1.1 and 2-1.2 of the Rules and Regulations Governing the Control of Air Pollution (Rules), continued in effect by Section 49(c) of the Act;
2. That during the period between January 28, 1971 and the filing of the complaint, Respondent conducted salvaging of copper wire by open burning in violation of the foregoing statutory and regulatory provisions; and
3. On the dates specified in paragraph 1 above, violated Section 9(c) of the Act by causing air pollution.

The complaint seeks the entry of a cease and desist order and the imposition of a penalty in the maximum statutory amount. A motion to dismiss the complaint was filed by the respondent alleging constitutional defects in the Environmental Protection Act, all of which contentions have been answered at length in previous decisions of this Board. See Environmental Protection Agency v. Granite City Steel Co., #70-34, March 17, 1971; Modern Plating

Company v. Environmental Protection Agency, #70-38, April 28, 1971. The motion to dismiss the complaint is denied.

The evidence of the Agency, more fully discussed below, clearly sustains the allegations of the complaint relative to open burning of automobiles and the salvage operation by open burning. Since violations of these provisions are manifest, we do not consider whether the offenses also constitute air pollution as defined in Sections 3(b) and 9(a) of the Act.

Respondent is ordered to cease and desist the open burning and salvage activities as charged in violation of the Act and the relevant regulations. Penalty in the amount of \$3,000.00 is assessed for the violations occurring on November 17, 1970, January 28, 1971, June 16, 1971 and June 23, 1971, as set forth below.

Respondent operates a salvage yard in an abandoned mine site located on the east side of Route No. 51 in Dowell, Illinois. We do not deem it necessary to go into the refinements of title as the evidence is clear that Respondent is the operator of the facility where the alleged offenses took place (R.56). Personnel of the Environmental Protection Agency observed burning cars on November 17, 1970 (R.27), dense smoke coming from the site on January 28, 1971 (R.51, 67), cars burning on June 16, 1971 (R.106) and open burning, probably of a car, on June 23, 1971 (R.126). Observations made on January 28, 1971 and June 23, 1971 confirm the salvage operation by burning, notwithstanding the inability of witnesses to testify that cars were, in fact, being burned on those dates.

Section 9(c) of the Act prohibits both open burning of refuse and the conduct of a salvage operation by open burning. Section 2-1.1 prohibits a salvage operation by open burning and Section 2-1.2 prohibits the open burning of refuse. "Refuse" under the Act is defined as "any garbage or other discarded solid materials" whereas the word "refuse" as used in the regulations includes "garbage, rubbish and trade waste."

Respondent's defense was essentially based upon an effort to show an absence of detrimental impact on the surrounding area and the need for the type of operation being conducted by Respondent. Since we make no affirmative ruling as to violation of Section 9(a) of the Act, being a prohibition of air pollution, which requires subjective finding of interference with enjoyment of life and property, the absence of detrimental impact on the adjacent areas is not the operative consideration. Open burning and salvage by open burning have been violations of Illinois law since 1965. The fact that these obnoxious practices have not constituted a severe nuisance in the

area of Respondent's facility is fortunate, but not a defense. Were there a severe nuisance, the penalty imposed might have been far worse. Nor does the fact that Respondent was not caught in the act of setting a match to the material burned constitute a defense. In one of the first cases decided by this Board, Environmental Protection Agency v. Neal Auto Salvage, Inc., #70-5, we held that once open burning is observed on premises owned or operated by Respondent, the burden falls on him to demonstrate that such burning was accidental. In the instant case, Agency witnesses observed personnel on the premises in the vicinity of the fire acting in a manner which furthered the violation, rather than prevented it. (R.55). Conversation between Agency personnel and Respondent disclosed an indifference to the conduct of his operation and no effort to abate the illegal burning. Nor can we accept the tired excuse that burning may have taken place accidentally in the course of the stripping operation. The likelihood of such occurrence is well known to anyone in the salvage business and affirmative steps must be taken to prevent such fires from taking place.

The Board is not unmindful of the problems created by abandoned and wrecked automobiles and the difficulty in their disposal. However, violation of the law is not the answer. Technology exists within the State enabling the disposal of auto bodies in compliance with the law.

The State of Illinois has long been concerned with the disposal of auto bodies which problem is one of national magnitude. See "Auto Disposal, a National Problem", U. S. Department of the Interior, Bureau of Mines, 1967. Government and industry have been and are presently engaged in efforts to eliminate the blight of abandoned and junk auto hulks. Variation and enforcement actions relative to auto salvage operations constituted the principal business of the old Air Pollution Control Board. For a review of the Board's activities in this respect, see Opinion of Currie, April 29, 1970 in Britz Auto Parts, VR 69-29, in which the subject of auto salvage, its history and litigation in Illinois are reviewed in detail. As the Opinion notes:

"The emission of dense, ugly smoke from the burning of junk cars is a familiar and unpleasant sight for highway travelers. This is a particularly barbaric, obsolete, and inexcusable form of pollution; for the smoke is highly visible, no attempt is made to contain it, and methods of reclaiming auto bodies without open burning are readily available. The harmful effects of particulate pollution have been amply documented in the Air Quality Criteria issued last year by the federal government:

Health, esthetics, property values, visibility, weather, and costs of cleaning, heating and lighting, may all be adversely affected. In this case, as in previous cases, there was undisputed evidence of alternate disposal methods: A mere \$25,000 will buy a relatively smokeless incinerator, and a shredding firm at Alton has offered to pay as much for auto bodies whether or not they have been burned."

Commenting on the same regulatory provision with which Respondent is charged in the present case, the opinion continues:

"Because open burning is so obnoxious and so unnecessary, this Board banned it outright in the first regulations it issued: "No person shall conduct a salvage operation by open burning." Rules and Regulations § 2-1.1. The regulation constitutes an administrative finding, amply supported by the facts, that the open burning of automobile bodies causes offensive, inexcusable air pollution not just in high-priced residential areas and state parks but whenever and wherever it occurs. Proof that the statute itself is violated is unnecessary in an enforcement proceeding under this section; to require such proof would deprive the regulation of any independent significance."

The opinion notes the existence of shredders in Peoria and Alton which will accept salvage auto bodies in an unburned condition. Undoubtedly, others exist in the State. Likewise, incinerators complying with the relevant regulations are obtainable at a reasonable price which would enable salvage operations in compliance with the law. The statute requires that we take into consideration the social and economic value of the pollution source and the technical practicability and economic reasonableness of reducing the emissions (Section 33(c)). We have concluded that no social or economic considerations suggest a continuation of respondents operation in violation of the law and that suitable legal alternatives are available that are both technically feasible and economically reasonable.

On September 2, 1971, this Board adopted revised open burning regulations (#R70-11). In the opinion supporting the regulations, we said:

"The record contains ample evidence as to the pollution caused by open burning of refuse dumps and of wrecked vehicles, and as to the lack of necessity for such burning. See Exhibits 4, 5, 7 and 8, giving some indication of the extent of smoke and other contaminants emitted by such operations,

and Exhibits 3, 8, 9, 10, and 21, indicating methods of sanitary landfill and of automobile and boxcar hulk disposal methods in actual use that obviate any need for burning in such cases. Attention is particularly called to a letter received by the Air Pollution Control Board from an auto hulk processor in late 1969:

"Because of the nature of our shredder operation at Alton, Illinois, we do not require burned auto bodies; however, we do accept both burned and unburned auto bodies at the same price. (Ex. 10).

The open burning of refuse dumps and open burning for salvage purposes have been illegal since 1965, and we reaffirm the prohibition with conviction."

We cannot conclude that the public interest of the state compels a continuing allowance of this obnoxious enterprise or ones comparable to it. Shredders, flatteners, incinerators and other means of disposal complying with the law are available. Those conducting operations of this character are obliged to seek and utilize them. We can no longer condone this unabated and illegal activity. See Environmental Protection Agency v. Towns Wrecking Company, #71-226, decided October 28, 1971, and "Auto Hulk Disposal, a Growing Business," Environmental Science and Technology, Volume 4, #1, 1/70, Page 17 (Ex. 9, #R70-11).

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

IT IS THE ORDER of the Pollution Control Board that Respondent cease and desist open burning and the conduct of a salvage operation by open burning at its Dowell, Illinois site. Penalty in the amount of \$3,000.00 is imposed for violation of the Environmental Protection Act, Section 9(c) and Section 2-1.1 and 2-1.2 of the Rules and Regulations Governing the Control of Air Pollution, continued in effect by Section 49(c), on the dates set forth in this Opinion.

I, Christan Moffett, Acting Clerk of the Board, certify that the above Opinion was adopted on the 11 day of November, 1971.


