

ILLINOIS POLLUTION CONTROL BOARD
December 9, 1971

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YOUTH FOR ENVIRONMENTAL SALVATION)
)
v.) PCB 71-255
)
CRANE FULVIEW GLASS DOOR COMPANY)
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Opinion of the Board (by Mr. Dumelle)

This enforcement action was filed on August 31, 1971 by Youth for Environmental Salvation (Y.E.S.), an unincorporated association, against Crane Fulview Glass Door Company (Crane). The complaint contained an allegation of air pollution by reason of the open burning of refuse and an allegation of water pollution due to the discharge of sewage i.e. waste water from lavatories and toilets, from the manufacturing plant. A hearing was held in the matter on October 29, 1971 at the public library in Waukegan.

Crane occupies premises at 1201 Crane Drive in Deerfield and apparently is a fabricator of glass doors. It is situated between Deerfield High School and a building under construction to be occupied by Evans Products (R.35). Approximately 20-35 persons are employed on the premises (R.48,65).

We shall deal with each of the allegations separately.

I. Air pollution - Open burning

The record contains ample eyewitness testimony of open burning on the Crane premises on May 4, 1971. After hearing from several witnesses Crane stipulated to the fact that open burning did in fact occur on the date in question on the premises (R.33-37). Mr. Harold Crane, apparently the principal in the respondent enterprise, stated that parties other than Crane may have started fires on the company property without the knowledge of the Crane Company (R.69-70). Surprisingly, Mr. Crane stated that he has never attempted to stop the burning by others on the Crane premises (R.78).

Clearly the premises were under the control of Crane and the responsibility for any open fires devolves upon Crane. The testimony of the several eyewitnesses in observing the burning on Crane's premises and relating its character and location establishes the existence of the violation. Crane failed to rebut the proof or otherwise provide a defense to the allegation.

Open burning has been prohibited in Illinois at least since 1965. The most recent enactment of the regulatory framework was the September 2, 1971 adoption by the Board of new Air Pollution rules regarding open burning. Apart from the existing regulations, open burning of refuse was outlawed by Section 9(c) of the Environmental Protection Act.^{1]} At the time of the subject occurrence open burning of refuse was violative of Rule 2-1.2^{2]} of the Rules and Regulations Governing the Control of Air Pollution and Section 9(c) of the Act.

We find that air pollution has occurred as the result of open burning of wood, paper and other materials on the Crane premises on May 4, 1971 in violation of the Environmental Protection Act and rules thereunder. The premises were under the direct control and supervision of Crane. Crane disclaims starting the fire but admits to doing nothing about the occurrence. In EPA v. J.M. Cooling (PCB 70-2, December 9, 1970) we considered a fire of undetermined origin which continued to burn for a number of weeks. In that case we found the party in control of the premises to be negligent and liable for the open burning and consequent air pollution. A money penalty in the amount of \$500.00 for the open burning was imposed in that case.

We will enter a cease and desist order against Crane but feel that such an order is simply not a sufficient deterrent, standing alone, to prevent recurrence of open burning. We will therefore enter a further order imposing a money penalty of One Hundred Dollars for the occurrence of open burning on May 4, 1971.

1] Ill. Rev. Stat. Ch. 111-1/2 § 1009(c)

No person shall:

- (c) Cause or allow the open burning of refuse, conduct any salvage operation by open burning, or cause or allow the burning of any refuse in any chamber not specifically designed for the purpose and approved by the Agency pursuant to regulations adopted by the Board under this Act; except that the Board may adopt regulations permitting open burning of refuse in certain cases upon a finding that no harm will result from such burning, or that any alternative method of disposing of such refuse would create a safety hazard so extreme as to justify the pollution that would result from such burning;

- 2] State of Illinois Rules and Regulations Governing the Control of Air Pollution

Rule 2-1.2

No person shall cause, suffer, allow or permit open burning of refuse...

II. Water pollution - Sanitary sewage discharge

Crane uses no appreciable amount of water in its manufacturing operations. The discharge into the septic system is almost wholly the wastes from the relatively small number of employees (30-35) using the sanitary facilities on the premises.

Mr. Emmet Fredbeck, a Senior Sanitarian with the Lake County Health Department visited the Crane premises on May 5, 1971 and performed a dye test of the septic system. Mr. Fredbeck described the test as simply dumping dye into the toilet and then checking for its presence in the open waters exterior of the premises (R.22). Mr. Fredbeck testified that dye was introduced into the sanitary facilities at the Crane facility. Its presence was later noted in a ditch near the plant. The tile drane from Crane runs into a drainage ditch which runs into a creek which flows into the North Branch of the Chicago River (R.34). Water pollution is manifest from the dye dispersion test, the results of flushing the dye through the toilets in the plant were noted only several hours later at an open ditch.

Additionally there was evidence that an illegal connection existed at the Crane facility connecting the septic tank overflow to the drainage system which led to the open ditch (R.58-59, Pet. Ex. 10, Resp. Ex.4). At some indeterminate time in the past a septic system overflow line had been connected to a storm drainage system whose purpose was to transport storm water off the premises (Pet. Ex. 7,8).

Undoubtedly the effluent in which the dye from the dye test was apparent was septic. We can take official notice of the fact that such an effluent would have a pollutional character^{3]}. Such a septic effluent, particularly next to a high density use such as exists here with the high school, would not only be offensive to the senses because of the noxious odors associated with it, but would constitute a definite health hazard due to the presence of pathogenic bacteria and viruses.

3] In an ancient Illinois Supreme Court case the court took judicial notice of the incidence of stream pollution. The court in Hayes v. Village of Dwight 150 Ill. 273, 37 N.E. 218 (1894) stated:

"Despite witnesses' testimony that in their opinion the proposed discharge of sewage would not have the affect of materially polluting the stream, the court held that little weight is to be given to the testimony of witnesses who attempt to swear contrary to known and established natural laws. That the sewage of a village of 1600 inhabitants, discharged into a small stream and render it unfit for domestic use, for at least a few rods below the point of discharge, is a pro-

We will include in our order in this case the direction that Crane cease and desist from causing water pollution in regard to their faulty sanitary sewage system. We will allow Crane thirty days to comply with the order. What we mean is that should the sanitary sewage problem not be taken care of within thirty days from date Crane will have to cease using the sanitary sewage system until the system can measure up to the criteria and standards in the Statute and applicable regulations.

We will further order that Crane disconnect the illegal sewer line connection if they have not already done so.

Also we will order that Crane pay a money penalty in the amount of One Thousand Dollars for the continuing water pollution violation.

III. Penalties

After determining the existence of the two flagrant violations alleged and proved in this case some considerable consternation was involved in ascertaining an appropriate penalty to insure that the violations do not recur. There was no difficulty in seeing the necessity and wisdom of cease and desist orders for the violations. However, the question of money penalties was troublesome. We have here two gross and inexcusable transgressions upon the rights of the citizenry to live in a hospitable environment. To balance the audacious anti-social conduct of the pollution we have the fact that the company in this case is relatively small when compared to the corporate giants. The Environmental Protection Act provides for penalties up to \$10,000 per occurrence plus \$1,000 for every additional day of violation.^{4]} We are imposing a relatively small money penalty in this case with the hope that Crane, as well as other companies similarly situated, will be fairly and completely warned of the consequences of failing to comply with regulations respecting the protection and preservation of the environment.

4] Ill. Rev. Stat. Ch. 111-1/2 § 1042

Any person who violates any provision of this Act, or any regulation adopted by the Board, or who violates any determination or order of the Board pursuant to this Act, shall be liable to a penalty of not to exceed \$10,000 for said violation and an additional penalty of not to exceed \$1,000 for each day during which violation continues, which may be recovered in a civil action, and such person may be enjoined from continuing such violation as hereinafter provided...

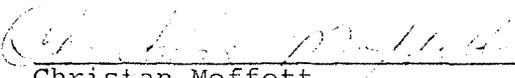
position too plain and too thoroughly verified by ordinary experience and observation to admit of reasonable doubt."

ORDER

Having considered the complaint, transcript, and exhibits in this proceeding it is HEREBY ORDERED:

1. That Crane Fulview Glass Door Company cease and desist any and all open burning operations on the premises.
2. That Crane Fulview Glass Door Company within thirty (30) days pay to the State of Illinois a money penalty in the amount of One Hundred Dollars (\$100.00) for causing air pollution by open burning on May 4, 1971 contrary to Section 9(c) of the Environmental Protection Act and the State of Illinois Rules and Regulations Governing the Control of Air Pollution.
3. That Crane Fulview Glass Door Company cease and desist from causing water pollution in connection with its sanitary sewage septic system within thirty (30) days of this order. Crane shall file a verified report with the Board and the Environmental Protection Agency before January 15, 1972 detailing any and all steps taken to carry out the terms of this paragraph.
4. That Crane Fulview Glass Door Company within seven (7) days of this order remove the physical connection between the septic system serving the premises and the ditch which ultimately drains to the North Branch of the Chicago River. Within ten days of the severance of the connection, if the same has not already been accomplished, Crane Fulview Glass Door Company shall by affidavit inform the Pollution Control Board and the Illinois Environmental Protection Agency of the breaking of the connection. If the connection has been severed previous to the date of this order Crane Fulview Glass Door Company shall by affidavit inform the Board and the Illinois Environmental Protection Agency of the date of disconnection.
5. That Crane Fulview Glass Door Company within thirty (30) days pay to the State of Illinois the sum of One Thousand Dollars (\$1,000.00) as a penalty for violation of the prohibition against water pollution contained in the Environmental Protection Act and rules thereunder.

I, Christan Moffett, Acting Clerk of the Illinois Pollution Control Board, hereby certify that the Board adopted the above Opinion and Order on the 7 day of December, 1971.



Christan Moffett
Acting Clerk
Illinois Pollution Control Board