

- 4) Respondent failed to prohibit open dumping at the landfill in violation of Rule 3.04 of the Rules:

| | | |
|------------------|------------------|--------------------|
| March 13, 1967 | October 21, 1970 | August 24, 1971 |
| April 23, 1970 | January 4, 1971 | September 9, 1971 |
| June 17, 1970 | June 2, 1971 | September 14, 1971 |
| October 20, 1970 | August 13, 1971 | September 15, 1971 |
| | | January 10, 1972 |

- 5) Respondent failed to spread and compact refuse properly in violation of Rule 5.06:

| | | |
|------------------|-------------------|--------------------|
| March 13, 1967 | November 23, 1970 | September 9, 1971 |
| April 23, 1970 | December 16, 1970 | September 14, 1971 |
| June 17, 1970 | January 4, 1971 | September 15, 1971 |
| October 20, 1970 | August 13, 1971 | October 14, 1971 |
| October 21, 1970 | August 24, 1971 | November 4, 1971 |
| | | January 10, 1972 |

- 6) Respondent failed to provide proper daily cover in violation of Rule 5.07(a) of the Rules:

| | | |
|------------------|-------------------|--------------------|
| March 13, 1967 | November 23, 1970 | September 9, 1971 |
| April 23, 1970 | December 16, 1970 | September 14, 1971 |
| June 17, 1970 | January 4, 1971 | September 15, 1971 |
| October 20, 1970 | August 13, 1971 | October 14, 1971 |
| October 21, 1970 | August 24, 1971 | November 4, 1971 |
| | | January 10, 1972 |

- 7) Respondent failed to provide proper final cover at his landfill in violation of Rule 5.07(b) of the Rules:

| | | |
|-----------------|--------------------|--------------------|
| March 30, 1971 | August 24, 1971 | September 15, 1971 |
| June 2, 1971 | September 9, 1971 | October 14, 1971 |
| August 13, 1971 | September 14, 1971 | November 4, 1971 |
| | | January 10, 1972 |

- 8) Respondent failed to provide adequate vector control in violation of Rule 5.09 of the Rules:

| | | |
|------------------|-------------------|--------------------|
| March 13, 1967 | November 23, 1970 | September 9, 1971 |
| April 23, 1970 | December 16, 1970 | September 14, 1971 |
| June 17, 1970 | January 4, 1971 | September 15, 1971 |
| October 20, 1970 | August 13, 1971 | October 14, 1971 |
| October 21, 1970 | August 24, 1971 | November 4, 1971 |
| | | January 10, 1972 |

- 9) Respondent caused or allowed the deposition of refuse in standing water in violation of Rule 5.12(c) of the Rules:

| | | |
|-------------------|-----------------|--------------------|
| June 17, 1970 | January 4, 1971 | September 9, 1971 |
| October 20, 1970 | March 30, 1971 | September 14, 1971 |
| October 21, 1970 | June 2, 1971 | September 15, 1971 |
| November 23, 1970 | August 13, 1971 | October 14, 1971 |
| December 16, 1970 | August 24, 1971 | November 4, 1971 |
| | | January 10, 1972 |

For violations alleged to have occurred prior to August 13, 1971 the Agency called only one witness other than Respondent. The witness testified that material burning on Respondent's property aggravated his breathing problem (emphysema). (R.6-7). He recorded the dates when burning took place. The dates were, in 1970: February 19, February 20, February 27, April 11, and May 27. (R. 70-10). None of the dates correspond with those in the Complaint. Respondent admits open burning in 1968 and 1969. (R. 28). He denies having personally engaged in burning at the site subsequently, but was aware that "people" burned material there. (R.28-29). Respondent has generally admitted the other violations charged in the Complaint. This includes: failure to prohibit open dumping (R.25-26); failure to spread and compact refuse properly (R.29); failure to provide proper daily cover (R.30); failure to provide adequate vector control (R. 30-31); and allowing the deposition of refuse in standing water (R.31-32,40). As to causing or allowing the dumping of garbage or other refuse, the record is inadequate to determine whether Respondent admitted the allegations or merely offered some justification for his unsuccessful attempts to control other's actions (R. 27). We impose a penalty only for those violations for which there are allegations in the complaint. No penalty will be imposed for gratuitous admissions made by the Respondent.

The Agency has alleged violations occurring as early as 1967 but the majority in 1971 and 1972. Violations as stated above were testified to by a Sanitarian for the Agency. He inspected the site on August 13, 1971 and on those dates subsequent. On each occasion, there had been no change from the initial observations (R. 38-42).

"Q. Could you describe for the record what change, if any, you can recall from visit to visit?

A. Well, on all of these visits the major part of the material remained constant. The fiberglass was still there. The amounts of cans and bottles bordering the creek was still there. There was still material in the creek. There was still fiberglass and other material dumped in the ponded area that Mr. Blackwell mentioned earlier. There was also fiberglass along a small hill. It appeared that there had been dumping there.

In other words, there had been no change, no cover, in my opinion no attempt to spread this material out and compact it in any way or no attempt was made to provide daily cover or final cover."

(R. 42-43).

Respondent is not unfamiliar with the Regulations. He has admitted conferences with members of the Agency (R. 23, 32-34). His only method of prohibiting access to the subject area was to string cable between fenceposts (R. 26). Respondent has been aware since at least 1970 of the necessity of obtaining a permit but has not attempted to obtain it,

instead having "just quit" (R. 33). Respondent has stated that his business is a small one, serving only one residential, and several commercial and industrial customers (R. 14-17). He also testified that since 1970, he has not dumped or burned refuse on the property in question (R. 21). Respondent stated that the greatest cause of his problems was vandalism that he was unable to control (R. 23-26).

If we accept as true all that Respondent has stated, we still must find that he is responsible for the violations alleged in the complaint. We believe Respondent has attempted to ignore his legal duties with respect to the landfill. Respondent's acquiescence in the dumping by others is in violation of the Statute and Regulations as we have previously held in Environmental Protection Agency v. Chicago, Rock Island and Pacific Railway Company, #72-136 (September 12, 1972), 5 PCB. The photographs entered into evidence make clear that a distressing situation exists at this site. (Complainant's Exhibits 5 through 8). The site presents a health hazard needing immediate attention. We order Respondent to spread, compact and provide final cover for his landfill within 45 days. Respondent shall immediately post conspicuous signs and limit access to the site, and take the other affirmative steps necessary to prevent the unlawful dumping of refuse and debris by others at this site.

For the violations admitted by Respondent, including those testified to by witnesses, we assess a \$200 penalty. We believe Respondent is responsible for not controlling chronic incidents of promiscuous dumping. If we had been persuaded that Respondent had been continuing an active landfill operation, the penalty would have been far greater. Unless and until Respondent is in compliance with all statutory and regulatory provisions relating to landfill operations he shall immediately cease and desist all landfill operations at this site, including all activities found in the complaint.

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

IT IS THE ORDER of the Pollution Control Board that:

1. Respondent shall pay to the State of Illinois, within 35 days from the date of this Order, the sum of \$200 as penalty for the violations found in this Order. 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 Drive, Springfield, Illinois 62706 by February 28, 1973.
2. Respondent shall spread, compact and provide final cover for his landfill within 45 days from the date of this Order.
3. Respondent shall immediately post conspicuous signs and limit access to the landfill site, and take the other affirmative steps necessary to prevent the unlawful dumping of refuse and debris by others at this site.

4. Respondent shall immediately cease and desist all landfill operations at this site, including all activities found in the complaint, unless and until he is in compliance with all statutory and regulatory provisions relating to landfill operations, subject to the provisions of paragraphs 2 and 3 above.

I, Christan Moffett, Clerk of the Illinois Pollution Control Board, certify that the above Opinion was adopted on the 23rd day of January, 1973, by a vote of 3 to 0.

Christan L. Moffett

