

ILLINOIS POLLUTION CONTROL BOARD
August 23, 1973

ENVIRONMENTAL PROTECTION AGENCY,)
)
 Complainant,)
)
 v.) PCB 73-52
)
JAMES ESAREY and GARY FITZJARRELL,)
)
 Respondents.)

Thomas J. Immel, Assistant Attorney General, on behalf of
Complainant;
Hugh A. Strickland on behalf of Respondents.

OPINION AND ORDER OF THE BOARD (by Mr. Seaman):

On February 6, 1973, the Agency filed Complaint against Respondent, James Esarey, the owner and operator of Greene County Landfill, a refuse disposal site and facility located in Township 12 North, Greene County, Illinois. It is noted that Mr. Gary Fitzjarrell, who was joined in the Complaint as a second individual Respondent and therein described as co-owner/operator, has been dismissed as a Respondent.

The complaint charges that since on or before July 1, 1970, and more particularly on October 2 and December 22, 1970, January 29, May 26, July 30 and October 20, 1971, and January 26, February 8 and 9, March 14, May 26, July 11 and October 6, 1972, Respondent operated the Greene County Landfill in such a manner as to violate the Act and the Rules and Regulations for Refuse Disposal Sites and Facilities in one or more of the following respects:

1. Caused or allowed the open dumping of garbage in violation of Section 21(a) of the Act;
2. Caused or allowed the open dumping of refuse in violation of Section 21(b) of the Act and Rule 3.04 of the Rules;
3. Failed to cover all exposed refuse with a compacted layer of six inches of cover material at the end of the working day or within one day of receipt of said refuse in violation of Rule 5.07(a) of the Rules;

4. Caused or allowed the open burning of refuse at the site in violation of Section 9(c) of the Act and Rules 3.05 and 5.12(d) of the Rules;
5. Failed to confine the dumping of refuse to the smallest practical area in violation of Rule 5.03 of the Rules;
6. Failed to spread and compact refuse as rapidly as it was admitted to the site in violation of Rule 5.06 of the Rules;
7. Failed to provide portable fences to prevent the blowing of litter or failed to police the fill and surrounding area to collect all scattered material in violation of Rule 5.04 of the Rules;
8. Allowed the deposition of refuse in standing water at the site in violation of Rule 5.12(c) of the Rules.

In support of these allegations, Complainant introduced the testimony of six Environmental Protection Agency inspectors and investigators, all of whom had visited the subject facility on one or more occasions.

Mr. David Beck testified that he inspected Respondent's facility on October 2, 1970 at approximately 5:00 p.m. Mr. Beck stated that he observed a large volume of garbage and refuse, some of which had not been compacted and none of which had been covered (R. 5). Regarding a second inspection on March 14, 1972, Mr. Beck testified that he again observed a large volume (200' x 100') of refuse laying open and that a subsurface fire was smoldering therein (R. 6). Mr. Beck further testified that he had observed refuse in standing water (R. 5) and that some of the refuse appeared to have been on site for at least a day (R. 10).

Mr. Gilbert Stauffer testified that he inspected Respondent's facility on January 29, May 26 and October 20, 1971. Mr. Stauffer testified that he observed a large volume (100' x 50' x 2') of uncovered refuse and garbage which appeared to be in a "weathered condition" (R. 33). Complainant introduced into evidence photographs which tend to show that certain of the refuse observed on May 26, 1971 remained uncovered until at least October 20, 1971 (EPA Group Exhibit No. 2).

Mr. David Lambert testified that he inspected Respondent's facility on July 30, 1971 at approximately 12:00 noon. Mr. Lambert stated that he observed refuse in ponded water (R. 44).

Mr. David Toberman testified that he inspected Respondent's facility on January 26, 1972 at approximately 1:45 p.m. Mr. Toberman stated that he observed a large volume (150' x 60') of garbage and refuse which had been partially spread and compacted but largely uncovered (R. 53). Mr. Toberman also stated that he

observed blowing litter and found no evidence of portable fencing (R. 55).

Mr. Richard Eisenkoff testified that he inspected Respondent's facility on February 8 and February 9, 1972. Mr. Eisenkoff stated that he observed a large volume (100' x 50' x 2') of uncovered garbage and refuse, some of which was burning (R. 64). Mr. Eisenkoff further stated that certain of the refuse was not compacted and that he observed blowing litter (R. 64). Some of the refuse appeared to have remained uncovered since October 20, 1971 (R. 66).

Mr. John Deifenback testified that he inspected Respondent's facility on four occasions in 1972 and once again in 1973. Mr. Deifenback stated that he observed underground fire, refuse in ponded water (R. 94). He further testified that the dumping area was not confined and that the refuse appeared to have been left for a long period without proper cover (R. 94). Mr. Deifenback stated that on March 16, 1973, he observed a large accumulation of burning brush.

This Board is satisfied from the testimony and photographs admitted into evidence that the Agency has proven the violations alleged in its Complaint. Further, Respondent has been warned repeatedly by the Agency that his operation was not in compliance. We can only conclude that Respondent has chosen to disregard the standards set by the Act and the Rules and that a penalty is, therefore, appropriate.

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 cease and desist the violations found herein and conform his operation to the applicable Rules;
2. Respondent shall pay to the State of Illinois the sum of \$1,500 within 35 days from the date of this Order. Penalty payment by certified check or money order payable to the State of Illinois shall be made to: Fiscal Services Division, Illinois Environmental Protection Agency, 2200 Churchill Road, Springfield, Illinois 62706.

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

Christan L. Moffett

