

ILLINOIS POLLUTION CONTROL BOARD  
October 10, 1972

ENVIRONMENTAL PROTECTION AGENCY     )  
  )  
  )  
          v.                             )     #72-129  
  )  
HENRY DE BOER, d/b/a MARENGO        )  
DISPOSAL COMPANY and                )  
PAUL JOOST                            )

MR. GEORGE D. KARCAZES, SPECIAL ASST. ATTORNEY GENERAL, APPEARED  
ON BEHALF OF ENVIRONMENTAL PROTECTION AGENCY  
MR. NORMAN POLLOCK, APPEARED ON BEHALF OF RESPONDENTS

OPINION AND ORDER OF THE BOARD (BY SAMUEL T. LAWTON, JR.)

Complaint was filed against Henry De Boer, d/b/a Marengo Disposal Company and Paul Joost alleging from on or before July 21, 1970 to the date of hearing, Respondent, Henry De Boer operated, and Respondent Paul Joost owned, a landfill disposal site in Marengo, Illinois, and that between July 15, 1971 and the date of the hearing, Respondents operated or allowed operation of the landfill site so as to cause or allow open burning of refuse in violation of Sections 9(a) and 9(c) of the Environmental Protection Act, Rules 2-2.1 and 2-1.2 of the Rules and Regulations Governing the Control of Air Pollution (Air Rules) and Rule 3.05 of the Rules and Regulations for Refuse Disposal Sites and Facilities (Land Rules). The complaint further alleges that between July 1, 1970 and the date of hearing, Respondents conducted a refuse disposal site without permit issued by the Environmental Protection Agency in violation of Section 21(e) of the Act and that between July 21, 1970 and the date of hearing, Respondents operated the landfill site in violation of the following Land Rules:

4.03(a) - failure to provide fencing; 5.03 - failure to confine dumping to the smallest practicable area; 5.04 - unsupervised unloading; 5.06 - failure to spread and compact; 5.07(a) - failure to apply six inches of daily cover; 5.07(b) - failure to provide adequate final cover; 5.09 - failure to employ adequate insect and rodent control measures; 5.10(a) - failure to conduct salvage operation in a sanitary manner; 5.10(b) - conduct of salvage operation near the operating face of the landfill; 5.10(d) - storing salvage materials so as to create a nuisance; Rule 5.12(c) - depositing refuse in standing water.

Hearing was held in Marengo on August 30, 1972. By oral stipulation entered into at the hearing, ownership and operation as

alleged in the complaint were admitted. Open burning of refuse resulting in discharge or emission of smoke was admitted between July 15, 1971 and July 19, 1971 and on October 5, 1971. The absence of a permit between July 1 and the date of hearing was admitted. With respect to the alleged violation of the land rules, the parties stipulated that Rule 4.03(a) was complied with after July 19, 1971 but was violated prior to that date; that Rule 5.04 with respect to unsupervised unloading was violated "on occasion", and that Rule 5.06 requiring spreading and compacting as rapidly as refuse was admitted to the site, was violated. Violation of Rule 5.07(a) requiring daily cover was admitted. The parties have stipulated that Section 5.07(b) requiring final cover had been complied with as to a limited portion of the tract (R.7) and that all salvage operations for which violations of Rules 5.10(a), (b) and (d) were asserted have ceased since "the last part of 1970" indicating violation between July 21, 1970, as alleged, and the end of the year. Violation of 5.12(c) prohibiting deposit of refuse in standing water was admitted between July 15, 1971 and July 19, 1971 and in October of 1971. The Assistant Attorney General stated that no evidence would be offered relative to the alleged violation of Rule 5.07(b) requiring final cover. However, as noted below, this does not mean that the final cover provision had been satisfied but rather that with the exception of a limited portion of the tract where final cover had been applied, the balance of the tract was not in condition to receive final cover (R.7).

Vernon Earl Krogh (R. 9) was the only witness for the Environmental Protection Agency. He testified to various inspections made of the Respondent's operation during the year 1971, commenting on his observations during such visits. He observed open burning on July 15, 1971 (R.13) and noted the absence of appropriate signs required by Rule 4.03(a) of the Regulations. Refuse in water was observed on July 16, 1971 (R.15). Pictures taken by Krogh on July 15, 16 and 19, 1971 (E.P.A. Ex. 1(a) through (i) show the open and uncovered dumping of garbage and refuse in sickening profusion. Photographs of smouldering fires and uncovered garbage and refuse and refuse dumped in water portray the violation of virtually all land-fill regulations alleged. Pictures taken in October of 1971 (EPA Ex. 2A and B), January and February of 1972 (EPA Ex. 3A through F) and August, 1972 (EPA Ex. 4A through D) show a continuation of this inexcusable condition which, if anything, appears to have worsened with the passage of time. Absence of supervision, failure to spread, compact and cover and failure to satisfy all site and housekeeping requirements was abundantly supported by the stipulation, testimony and exhibits. Flies were observed in substantial numbers on the occasions of Mr. Crowe's inspections, over a two-year period. No useful purpose would be served by specifying the observations of this witness on each occasion of his inspections. Violations of all Rules alleged is admitted by the Respondent with the exception of Rule 5.09 requiring insect and rodent control measures. The evidence clearly supports violation of this Rule, as well. Failure to pursue the charge of violation of the final cover requirements

at the hearing was justified on the basis that only a small portion of the tract was in such condition that the application of final cover would be appropriate. The bulk of the area, not having received even daily cover, was not in condition to receive final covering (R.90). Recent inspections indicate that refuse is no longer being dumped in standing water and that open burning is not taking place. Proper signs have been posted.

Henry J. DeBoer appeared as a witness on his own behalf. (R.41). He testified that he has been the operator of the Respondent company since July 1, 1967 which serves a community of approximately 4,200 people. He testified that the fire of July 15, 1971 started as a result of a burning load being dumped by a garbage truck (R.43) and that the Fire Department was called to help extinguish the fire, which continued to burn underground for several days. Letters from the Environmental Protection Agency to DeBoer dated July 30, 1970 and October 29, 1970 were received in evidence (R.47). The July 30, 1970 letter indicated operation of the site in a satisfactory manner but the need for a more daily and final cover. The letter of October 9, 1970 stated that the site was being operated in compliance with Agency requirements (Resp. Ex. 1 and 2). These letters were offered in mitigation of the charge that Respondents had operated their landfill without a permit, rather than by way of defense to this charge. In February of 1972, the Agency advised De Boer that a permit was necessary (R.50). De Boer testified (R. 52) that some effort was made to apply daily cover, but "under numerous circumstances the garbage was not covered with six inches of dirt", because of tractor breakdown or lack of help. Approximately 14 loads of garbage are dumped on the site over a five-day week. Refuse is not covered after each load and frequently not at all at the end of the day (R.53).

An insect problem is acknowledged. Orkin Exterminating Company has been hired to control rodent and fly problems (R. 55). Salvage operations, conducted at the dump until June or July of 1971 have presently ceased (R. 56). Non-garbage refuse, including 55-gallon drums and wooden skids, was located apart from garbage piles and presented serious difficulties of cover (R. 57). Dumping of refuse in water was conceded, principally in ponds caused by rain run-off accumulating in the dumping holes. This practice appears to have ceased.

On cross-examination, De Boer conceded that as early as July 15, 1971, he was advised that he did not possess an EPA permit (R.64) but that he relied on the July and October, 1970 letters to believe he was in full compliance with the regulations. As of the date of hearing, no permit had been sought.

Paul Joost testified on his own behalf (R. 75). He is the owner of the site on which the landfill is operated and has leased the property to Marengo Disposal Company since 1967. He lives 400 to

500 feet from the disposal hole. He testified that he was not bothered by odors, rodents or insects from the dump.

Ross Kitchen, Chief of the Marengo Fire Protection District, testified on behalf of Respondents relative to the July 15 and October 5, 1971 fires, both of which his department was successful in extinguishing with some help from Respondent's tractor, after several days of burning.

A letter of March 4, 1971 from C. E. Clark, Chief of the Bureau of Land Pollution Control of the Environmental Protection Agency to Henry De Boer (EPA Ex. 16) stated that violations existed at the disposal site with respect to failure to provide daily cover and dumping in standing water. Violations were also noted in letters of July 2, 1971, July 28, 1971 and February 4, 1972 from Clark to DeBoer (EPA Ex. 18).

We cannot tell from the record what the present condition of the dump site is although we are told that open burning of refuse and dumping of refuse in standing water have ceased and that final cover has been applied to a small portion of the tract. However, if the condition of the dump site is as portrayed in the various photographic exhibits, violations of the relevant statutory and regulatory provisions continue. From the oral stipulation of the parties, supported by evidence of the Environmental Protection Agency witness and the admission of the respondents, flagrant and continuing violations of the statute, and the air and land regulations have been demonstrated. We will order Respondents to take immediate steps to bring its operation into compliance with the regulations, to obtain a permit from the Environmental Protection Agency and to pay a penalty of \$2,000 for the violations alleged and admitted or proven as noted above. Because of the possibility that innocent citizens may be dependent on this operation for their refuse disposal, we will not direct the operation be shut down immediately, but will give a period of 60 days for Respondent to obtain a permit, and upon failure to obtain such permit the operation shall shut down upon the termination of this period.

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

IT IS THE ORDER of the Pollution Control Board:

1. Penalty is imposed against Henry De Boer, d/b/a Marengo Disposal Company and Paul Joost in the amount of \$2,000 for violations of Sections 9(a) and (c) and 21(e) of the Environmental Protection Act, Rules 2-1.1 and 2-2.2 of the Rules and Regulations Governing the Control of Air Pollution and Rules 3.05, 4.03(a), 5.03,

5.04, 5.07(a), 5.09, 5.10(a), (b) and (d) and 5.12(c) of the Rules and Regulations for Refuse Disposal Sites and Facilities, as set forth in the Opinion. 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 Drive, Springfield, Illinois 62706.

2. Respondents shall immediately cease and desist the operation of their Marengo landfill site in violation of the Environmental Protection Act, the Rules and Regulations Governing the Control of Air Pollution and the Rules and Regulations for Refuse Disposal Sites and Facilities, except that a 60-day grace period is given solely with respect to Respondent's obligation to obtain a permit as provided in Paragraph 3 of this Order.
3. Respondents shall apply for and obtain a permit for the operation of their Marengo refuse disposal site from the Environmental Protection Agency within 60 days of the date of this Order, and if such permit is not obtained within the time prescribed, Respondents shall close down their landfill operation.

I, Christan Moffett, Clerk of the Illinois Pollution Control Board, certify that the above Opinion and Order was adopted on the 10<sup>th</sup> day of October, 1972, by a vote of 4 to         .

Christan Moffett  
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