

ILLINOIS POLLUTION CONTROL BOARD
October 24, 1972

ENVIRONMENTAL PROTECTION AGENCY)
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 v.) #72-67
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)
 VILLAGE OF PORT BYRON)

Mr. Prescott Bloom, for the Environmental Protection Agency

Mr. Julius Lytton, for the Village of Port Byron

Opinion & Order of the Board (by Mr. Currie):

Complaint was filed on February 22, 1972, against the Village of Port Byron ("Respondent") alleging numerous violations of the Illinois Environmental Protection Act, Ill. Rev. Stat., Ch. 111 1/2, ("Act") and the Rules and Regulations for Refuse Disposal Sites and Facilities ("Land Rules") at Respondent's Rock Island County landfill site. Hearing was held on May 8, 1972.

Evidence indicated that there is uncovered combustible and putrescible material at the site (R. 13, 17-19; EPA, Ex. ##3-9). An Agency witness testified that, "it appeared they attempted to make a landfill. . . but they had allowed the face of the fill to get too high, too steep; therefore, they couldn't cover all the refuse." (R. 18). But several witnesses for Respondent testified that the Village had quit using the site as a garbage dump or landfill many years ago (R. 65, 74).

The Village Clerk stated that even though the Village had stopped using the site, "approximately Aug. 21, 1971. . . (and) we hadn't used it before that anyway," there were some people that would "go in there and dump but not with Village knowledge." (R. 65, 66). He added that the Respondent has had contracts with various scavenger services for over seven years to pick up, haul and dump the Village's refuse at a site in Rock Island (R. 66, 67), and that people from both within and without the Village "probably" dump at the site in question (R. 67). A Village Trustee confirmed these remarks (R. 74-76), and both witnesses noted that the Village had posted signs indicating that the dump was closed to the public after having been notified by the Agency of the alleged violations (R. 68, 69, 76). Indications are that conditions at the site are now "practically the same" as they were at the time of the Agency's investigation (R. 61), and that while

some areas may have been covered (R. 76), the public may still be using the site to dump refuse and trash.

The Village had attempted to police the site for a while (R. 76), and at one time had even stationed a municipal employee at the site to maintain it (R. 68). But the Village has never investigated the cost of grading, covering or cleaning up the site (R. 71, 72).

The issue is whether Respondent "caused or allowed" the open dumping within the meaning of the statute, Ill. Rev. Stat., Ch. 111 1/2, § 1021(b), and we believe that the evidence indicates that on at least one occasion it did. An EPA sanitary inspector testified that he saw uncovered refuse at the site on June 9, 1971 (R. 19) and August 23, 1971 (R. 22) and that on both occasions he saw no evidence that the site had been covered the previous day. There is no other testimony in support of the allegation that Respondent failed to provide daily cover on these two dates although the witness did say there was unsatisfactory spreading and compacting, and flies were present on both occasions (R. 23). This standing by itself is insufficient evidence upon which to find a violation, but the witness added that he returned on August 24 and noted that conditions had not changed (R. 24) and had photographs to verify his testimony (EPA Ex. #3-9). We find that the presence of uncovered refuse at the site on August 23 and 24, 1971 constitutes a violation of the Act and the Land Rules but, although testimony indicated that on various visits made by an EPA engineer, conditions "appeared" not to have changed (R. 45) the testimony lacked sufficient specificity to hold that additional violations were proved. But since the evidence indicates that Respondent has not used the site for dumping purposes for many years, we will not impose penalties for such violations, provided, however, that Respondent substantially improves its program to police the site and arranges for final cover of the site within a reasonable time.

Owners of landfill and refuse disposal sites have a duty to police the sites, and to make sure that applicable state laws and regulations are not being violated. They also have a duty to take all reasonable steps necessary to prevent others from using the sites illegally, and to clean up after those who disregard the law in their use of the sites. See EPA v. Otto E. Dobbek, Jr., et al., # 72-130 (August 22, 1972); EPA v. Chicago, Rock Island and Pacific R.R. Co., #72-136 (September 12, 1972); EPA v. Meyer Jacobs et al., #72-171 (September 26, 1972). We will order Respondent to cease and desist further dumping operations at the site, though it would appear this has already been done, in order to assure that the site will not be reactivated as a dumping grounds in the future. Furthermore, we will require Respondent to accelerate its efforts to provide final cover of the site, and to greatly improve its program of policing the site in the interim, in

order to avoid aggravation of the existing problems.

ORDER

IT IS HEREBY ORDERED THAT:

1. Respondent shall immediately cease and desist all dumping of garbage, refuse or trash at the landfill site;
2. Respondent shall take all necessary steps to adequately police the site to prevent the further open dumping of garbage, refuse or trash by any private individual or public agency;
3. Respondent shall provide for the final cover of the site within forty-five (45) days of receipt of this Order.

I, Christian Moffett, Clerk of the Pollution Control Board, certify that the Board adopted the above Opinion & Order this 34th day of October, 1972, by a vote of 5-0.

Christian Moffett

