

ILLINOIS POLLUTION CONTROL BOARD
November 8, 1973

ENVIRONMENTAL PROTECTION AGENCY,)
)
 Complainant,)
)
 v.) PCB 72-78
)
GIL MIRANDA, d/b/a JO-LOCK AUTO)
WRECKERS,)
)
 Respondent.)

Nicholas G. Dozoryst II, Assistant Attorney General for the EPA
Gil Miranda appeared on his own behalf

OPINION AND ORDER OF THE BOARD (by Mr. Henss)

Respondent operates an automobile wrecking and salvage yard in Lockport, Illinois. The Environmental Protection Agency filed a Complaint alleging that Respondent repeatedly operated his business in such manner as to cause or allow the open burning of refuse and automobile appurtenances. Respondent's acts, according to the Complaint, were violations of Section 9(a) and 9(c) of the Environmental Protection Act, Rules 2-1.1 and 2-1.2 of the Rules and Regulations Governing the Control of Air Pollution, and Rule 3.05 of the Rules and Regulations for Refuse Disposal Sites and Facilities.

A hearing on this matter was originally scheduled for May 1, 1972 but was continued and rescheduled by the hearing officer for June 5, 1972 because Miranda said he had not yet retained an attorney. On June 5, 1972, Miranda failed to appear for the hearing and attempts to contact him by telephone were unsuccessful since the business phone had been disconnected.

In Miranda's absence, the Agency presented its case which rested solely on the testimony of Agency Investigator William Zenisek. Zenisek testified that he had investigated Respondent's place of business on April 29, 1970 and observed "about 4 burned automobiles, car bodies". One or two of the automobile hulks were observed still smoldering (6/5/72, R. 5). After receiving a complaint from the Will County Health Department, Zenisek returned to the site on March 23, 1971 where he observed "some cushions burning", and "the emission of very dense black smoke" at about 4:15 p.m. He also noticed "a second area that had been burned

out". This appeared to be a "burned out pile of salvage material". Zenisek suspected that the burned out area was the burn which had been mentioned by the Will County Health Department (6/5/72, R. 9). On April 28, 1971 the Agency sent a letter advising Respondent that his activities were probable violations of the law which prohibits open burning.

Zenisek returned to the salvage yard on April 30, 1971 to investigate dense black smoke coming from the site. On that date he saw the burning and smoldering remains of approximately five burned out automobile cushions and three burned out tires. Zenisek's report (Agency Exhibit #4) on the investigation shows that he talked to Al Usery, one of Respondent's employees. The report states:

"Mr. Usery was surprised that there was burning in the scrap yard and immediately spoke to one of the workers to get water and extinguish the fire. Mr. Usery said that they try to be careful to prevent fires but they occasionally have an accidental fire in the yard which they try to extinguish as soon as possible with water. When I left the site the fire was fairly well extinguished."

On December 20, 1971, at 4:35 p.m., Zenisek returned to the site where he observed a small pile of material burning and what appeared to be a newly installed incinerator device. As shown in Agency Exhibit #5, dark smoke was coming from the stack of the incinerator and a small fire was burning in the salvage yard. The record does not indicate what actions Zenisek took after he discovered the fire on this date.

At the conclusion of the Zenisek testimony, the Agency moved for a summary judgment and requested a penalty in the amount of \$1,000. However, the hearing officer reopened the record on June 8, 1972 and Miranda appeared without counsel and pleaded his own case. He stated that he had not deliberately burned anything at the site except in an incinerator which had not been used since "one of them told us we couldn't use it". Miranda indicated that it was possible that some of his employees had set small fires in the winter time for warmth without his knowledge. He said that his operation generally closes at 4:00 p.m. and that he didn't know how the fires which had been observed after 4:00 p.m. could have started. Respondent testified that after the Agency sent him the warning he had issued orders prohibiting any fires.

On one occasion Miranda had observed smoke coming from automobiles which another firm had delivered to his salvage yard about 2 hours earlier. His statement, however, did not indicate whether the automobiles were smoldering at the time of delivery or if Respondent's employees were responsible for the fire. Miranda

also offered to present data showing that the price he received for his salvage materials was about 90¢ per 100 lbs. instead of the 95¢ per 100 lbs. payable for burned out automobiles. He received less income since he didn't burn. A later hearing established that Miranda did send the data to Assistant Attorney General Nicholas Dozoryst but the stubs were never entered as evidence by either party.

Respondent stated several times that he did not burn for salvage. He indicated that a nearby tire business had caused several fires on his property and that one fire at night could have been caused by vandalism.

Miranda testified that he has ceased operation at the salvage yard and has released all employees. He has reduced his automobile inventory from 400 to 70 and will either sell the operation or continue as a parts operation only.

Nothing in the record proves that Miranda "caused or allowed" open burning for the express purpose of disposing of unsalvageable materials. No proof was adduced to refute Respondent's claim that the open burning was accidental, caused by an adjacent business firm, or caused by vandalism. There is no evidence that Respondent failed to extinguish fires when he became aware of them.

The Agency failed to produce one shred of solid evidence to prove that Respondent's incinerator was operating outside the Regulations. We have only vague testimony alluding to the incinerator operation, two photographs, one having the notation "unapproved incinerator". This type of evidence is not sufficient to prove a violation.

Finally, although Respondent was charged with a violation of the Refuse Disposal Regulations, we find not the slightest hint in the record that Respondent was operating or had operated a refuse disposal site.

Thus, the Board is compelled to find that the Agency failed to prove its case on any of the charges. Accordingly, all charges against Gil Miranda are hereby dismissed.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order was adopted this 8th day of November, 1973 by a vote of 5 to 0.

Christan L. Moffett