

ILLINOIS POLLUTION CONTROL BOARD
September 6, 1972

ENVIRONMENTAL PROTECTION AGENCY)
)
 Complainant,)
)
 v.) PCB 72-244
)
 JACK OHLMAN CONTRACTOR,)
)
 Respondent.)

Prescott E. Bloom, Assistant Attorney General for the EPA
Thomas H. Trager, Attorney for Respondent

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

Respondent is charged with violating Section 9(c) of the Environmental Protection Act in that he caused or allowed open burning of refuse at a construction site near Peoria Heights on December 6, 1971. Evidence revealed that on the date in question the volunteer fire department of Peoria Heights was called to the site to combat a trash fire. The burning rubbish was in a pile about 30' long, 20' wide and 6' in height. It consisted of cardboard boxes, wood, insulation, paint cans, concrete and various "tailings" from the construction of apartment buildings at that location. Testimony indicated that it was customary to pile up the trash and then haul it away by truck at regular intervals. The record does not reveal how the fire started.

Respondent is the principal stockholder of Jack Ohlman and Associates, a corporation which has owned or controlled the acreage in question for several years and has participated in the construction of an apartment building complex on it. Four apartment buildings had been finished and six were under construction at the time of the fire. Respondent referred to the corporation as "my" corporation (R. 30). He admitted that he was in control of the construction site (R. 29).

Respondent was on the site in his office when he learned of the fire. His foreman or "site boss" and various subcontractors were apparently on the job at the time the fire started but they did not testify.

The fire created a considerable amount of smoke in the residential area for several hours and was not completely extinguished until the fire department had made two visits to the scene.

On the record we believe Respondent must be held responsible for causing or allowing the open burning, even though there is no evidence that he started the fire or directed his employees to do so. It is clear that Respondent was in control of the area and that the activities which led to the creation of the trash pile and the disposal of the tailings were under his supervision. The best that can be said for Respondent is that he negligently failed to properly supervise the disposal of the trash. The responsibility was his. Under the circumstances the Respondent had the burden of offering a satisfactory explanation for the fire. EPA vs. Neal Auto Salvage Inc. PCB 70-5. This he failed to do.

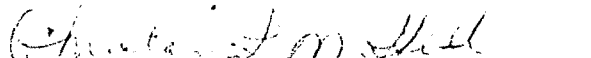
This one occurrence does not require the imposition of a heavy penalty. For an incident of this type without proof of wrongful intent we believe a penalty of \$100.00 is adequate.

ORDER

It is ordered that:

- (1) Respondent cease and desist from causing or allowing open burning of refuse in violation of the Environmental Protection Act.
- (2) Respondent Jack Ohlman shall pay to the State of Illinois by October 6, 1972 the sum of \$100.00 as a penalty for the violations found in this proceeding. Penalty payment by certified check or money order payable to the State of Illinois shall be made to: Fiscal Services Division, Illinois EPA, 2200 Churchill Drive, Springfield, Illinois 62706.

I, Christan Moffett, Clerk of the Pollution Control Board, certify that the Board adopted the above Opinion and Order this 16th day of September, 1972, by a vote of 4-0.


Christan L. Moffett, Clerk
Illinois Pollution Control Board