

ILLINOIS POLLUTION CONTROL BOARD
August 15, 1972

ENVIRONMENTAL PROTECTION AGENCY)
OF THE STATE OF ILLINOIS,)
)
 Complainant,)
)
 v)
)
)
JAKE'S AUTO & WRECKING CO., INC.,)
an Illinois corporation, and JAKE)
TALMADGE d/b/a JAKE'S AUTO WRECKERS,)
)
 Respondents.)

PCB 72-55

Douglas T. Moring, Assistant Attorney General, for the Environmental Protection Agency;
H. Arthur Hammel for Respondents.

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

This is an enforcement proceeding brought by the Agency against Respondents who operate an automobile wrecking and salvage yard in or near Joliet, Illinois. The Complaint, filed February 9, 1972, charges Respondents with causing or allowing open burning of refuse and sundry automobile appurtenances, and conducting salvaging and reclaiming of automobile metals by open burning, on April 29, May 1 and 20, July 7, 17, 18 and 27, August 12, November 7, 8, 9 and 10, and December 9, all in 1971, and on January 24, 1972.

By written stipulation filed prior to the public hearing Respondents admitted the allegations of the Complaint but reserved the right to present as part of their case in chief any affirmative defenses they might have.

At the public hearing, conducted July 5, 1972, Respondents stated that they had no affirmative defenses to present (R.5). Respondents did, however, present the testimony of Mr. Jake Talmadge individual Respondent and President of the corporate Respondent, in mitigation of any money penalties that the Board might assess.

Respondent Talmadge's unchallenged testimony was that since filing of the Complaint he had done his utmost to avoid further open burning violations (R. 9. 21, 23), that only a single additional open burning incident had occurred (an automobile seat caught fire from a burning cigarette), and that he put out the fire with a hose as soon as he could (R. 9).

Mr. Talmadge testified that his formal education extended only through the seventh grade (R. 23-24), and that the automobile salvage yard provides the only income he and his wife receive (R. 10). Copies of Respondents' 1969 and 1970 corporate and personal income tax returns were placed in evidence (Exhs. 1-4). They show that Mr. Talmadge's compensation for 1969 was \$2,350.00 and

that the corporation incurred a loss during 1969 of \$321.78. In 1970 Mr. Talmadge received \$2,618.34 compensation and the corporation reported taxable income of \$1,740.36.

Respondent Talmadge testified that his corporate and personal income tax returns for 1971 had not been filed as yet because he was unable to pay for preparation of the returns by a bookkeeping and tax service (R. 10-11). Mr. Talmadge said he has been and still is ill with malaria, pneumonia and headaches, that he received treatment for these illnesses as an outpatient at Hines Hospital last year (R. 14), and is currently receiving medical treatments from a Joliet doctor (R. 15). Because of these illnesses Mr. Talmadge has been and is presently on a restricted work schedule, which has deeply and adversely affected his income (R. 16, 20).

We have before us then, a situation in which numerous open burning violations have been admitted and Respondents have in effect agreed to the entry of a cease and desist order. In seeking to minimize a money penalty Respondent Talmadge points to his firm resolve to avoid future violations as well as to his poor health and income plight and a resulting limited ability to pay such a penalty. Respondents' counsel suggested that imposition of a large money penalty might force Respondents out of business (R. 5-6).

Financial hardship is a factor that the Board has considered in the past in assessing the magnitude of a money penalty (e.g. see EPA v. City of East St. Louis, PCB #71-26, decision dated July 8, 1971). Under the circumstances we believe no useful purpose would be served in assessing more than a nominal money penalty against Respondents, whose ability to pay a larger penalty is left in serious doubt on the record before us. Accordingly, a cease and desist order will be entered, and Respondents will be required to pay a nominal penalty of \$50.00.

ORDER

1. Respondents shall cease and desist from the open burning of refuse and automobile appurtenances at their automobile wrecking and salvage yard located in or near Joliet, Illinois.
2. Respondents shall within 35 days after receipt of this Order pay a penalty of \$50.00 by check payable to Fiscal Services Division, Environmental Protection Agency, 2200 Churchill Road, Springfield, Illinois 62706.

I, Christan Moffett, Clerk of the Pollution Control Board, certify that the Board adopted the above Order and Opinion this 15th day of August, 1972, by a vote of 5-0.

Christan Moffett