

ILLINOIS POLLUTION CONTROL BOARD
January 16, 1973

ENVIRONMENTAL PROTECTION AGENCY)
)
)
 v.) PCB 72-128
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)
 TUCKER FREIGHT LINES, INC.)
 a corporation)

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

This is an enforcement action alleging that Tucker has owned a landfill site near Montgomery in Kane County, Illinois and has operated the site on numerous specified dates in violation of the Environmental Protection Act and also of the Rules and Regulations for Refuse Disposal Sites and Facilities. The hearing was held on November 3, 1972.

The hearing had originally been set for October 18, 1972. On that date the Agency appeared but the respondent did not whereupon the hearing officer telephoned the respondent and at the respondent's request continued the hearing to November 3. The hearing officer also sent a letter to the respondent stating that the hearing had been re-set for November 3. On November 3 the respondent did not appear again. Once again the hearing officer telephoned the respondent and advised them that the hearing would proceed without the respondent as a default matter. At the request of the respondent, the hearing officer allowed them fourteen days thereafter in which to present any written evidence they may have had.

On November 17, the respondent filed with the Board an answer to the Complaint wherein it denied almost all of the allegations in the Complaint. It did admit, however, that it owns the site in question. On December 6, the Agency filed a Motion to Strike the Answer and for Default of Respondent pointing out that the unverified Answer could not serve as evidence in the case. We agree. We will not treat the Answer as evidence; it is merely an unverified pleading and therefore cannot be considered as any basis for our decision.

One alleged violation is open dumping of garbage and refuse in violation of Sections 21(a) and 21(b) of the Act respectively and also of Rule 3.04 of the Rules. There is no evidence in the record to prove open dumping. No one was seen dumping and there is insufficient evidence to show that new refuse was present on certain days which had not been there earlier.

It was alleged that the site was not adequately fenced, in violation of Rule 4.03(a) of the Rules. The Agency inspector testified that there was inadequate fencing on the specific dates alleged. We find that the site was not adequately fenced in violation of Rule 4.03(a) on 12/29/70, 2/4, 4/26, 6/15, 8/10, 8/16, and 8/17/71, 1/26 and 2/15/72.

It was alleged that the dumping of refuse was not confined to the smallest practical area, in violation of Rule 5.03. The Agency inspector testified that the refuse was not confined to such area on 12/29/70, 2/4, 4/26, 8/10, 8/16, and 8/17/71, 1/26 and 2/15/72. We find that the violations did occur on the dates stated by the inspector.

It was alleged that the unloading of refuse was not supervised, in violation of Rule 5.04. Since there is no evidence of any unloading occurring, we must find that there was no need for any supervision. In order for there to be a need for supervision there must be proof that there was actually unloading on the dates alleged.

It was alleged that there was insufficient equipment in operating condition at the site, in violation of Rule 5.05. The inspector testified that there was no equipment at the site on 12/29/70, 2/4, 4/26, 6/15, 8/10, 8/16 and 8/17/71, 1/26 and 2/15/72. We find that the violations did occur on the dates stated by the inspector.

It was alleged that the refuse was not spread and compacted, in violation of Rule 5.06. The inspector testified that there was no spreading or compacting being done on 12/29/70, 2/4, 4/26, 6/15, 8/10, 8/16 and 8/17/71, 1/26 and 2/15/72. We find that the violations did occur on the dates stated by the inspector.

It was alleged that there was no daily or final cover, in violation of Rule 5.07(a) and (b) respectively. The inspector testified that there was no cover on any of the alleged dates. Furthermore, photos taken by the inspector on four of the dates show that the refuse had not been covered. In addition, it would almost be impossible to provide daily cover without any equipment ever being present at the site. We find that there was no daily cover, in violation of Rule 5.07(a) on 12/29/70, 2/4, 4/26, 6/15, 8/10, 8/16 and 8/17/71, 1/26 and 2/15/72.

It was alleged that there was refuse in standing water, in violation of Rule 5.12(c). The inspector testified that he did see refuse in standing water on 4/26, 6/15, 8/10, 8/16 and 8/17/71, 1/26 and 2/15/72. We find that the violations did occur on the dates stated by the inspector.

Finally, it was alleged that the site was operated in a manner so as to create a water pollution hazard, in violation of Section 12(d) of the Act. However, there is no evidence in the record upon which to make such a finding.

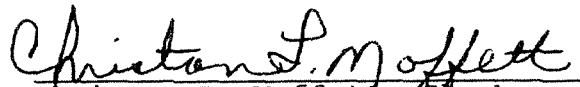
The inspector did testify that the site is now closed and that a final cover has been applied. It appears that Tucker merely owns the site but is not in the business of operating a landfill for profit. We would classify this as a promiscuous dump site but nevertheless the owner is responsible for allowing his property to be used in such manner. Ample notice of the situation was given to Tucker by conversations between Agency personnel and Tucker on April 26, 1971 and June 15, 1971 (R.10, 12). In addition, the Agency Exhibits Nos. 13-18 show that letters were sent to Tucker on November 12, 1970, February 12, 1971, May 7, 1971, May 10, 1971, August 13, 1971, and February 4, 1972. Under the circumstances we find that a penalty of \$500 would be appropriate. The situation should have been remedied long before now.

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

ORDER

1. Respondent shall cease and desist from all violations found in this opinion.
2. Respondent shall pay to the State of Illinois by February 21, 1973 the sum of \$500 as a penalty for the violations found in the proceeding. 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.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 16th day of January, 1973 by a vote of 3-0.


Christan L. Moffett, Clerk
Illinois Pollution Control Board

