

ILLINOIS POLLUTION CONTROL BOARD

March 2, 1972

ENVIRONMENTAL PROTECTION AGENCY)
)
 v.) PCB 71-339
)
CENTRAL ILLINOIS LANDFILL, INC.)

Prescott E. Bloom, Attorney for the Environmental Protection Agency
Richard W. Leiken, Attorney for Central Illinois Landfill, Inc.

Opinion and Order of the Board (by Mr. Aldrich):

On October 29, 1971, the Environmental Protection Agency ("Agency") filed a complaint against Central Illinois Landfill, Inc., alleging numerous violations of the Environmental Protection Act ("Act") and of the Rules and Regulations for Refuse Disposal Sites and Facilities ("Land Rules"). Respondent operated a refuse disposal site located in Kappa, Illinois, during the period of time cited in the complaint.

The complaint first alleges that Respondent operated its refuse disposal site without obtaining a permit from the Agency in violation of Section 21(e) of the Act. It is further alleged that on or about August 25, 1970, August 26, 1970, October 6, 1970, October 7, 1970, and April 19, 1971, Respondent caused or allowed open dumping of refuse in violation of Sections 21(b) and 21(f) of the Act and Section 3.04 of the Land Rules. Respondent is also alleged to have caused or allowed open burning of refuse on or about August 25, 1970, and August 26, 1970, in violation of Section 9(c) of the Act and Section 3.05 of the Land Rules. Finally, the complaint alleges that since July 1, 1970, and in particular on August 26, 1970, October 6, 1970, and April 19, 1971, Respondent operated its refuse disposal site in violation of Sections 4.03(a), 5.05, 5.07(a), 5.08 and 5.12(a) of the Land Rules.

The record indicates that Central Illinois Landfill, Inc. was formed by Burton Nevius and Bert Jackson in 1968, with the hope of acquiring a contract to handle refuse from the City of Bloomington (R.101, 120). The Corporation's bid was rejected, however, in favor of a competitor. As a result, Mr. Jackson was no longer interested in the Corporation and severed his relationship with it. According to Mr. Nevius, the Corporation was then dissolved (R.102). Mr. Nevius subsequently contracted to purchase 10-15 acres of land from James Young to use as a refuse disposal area. Mr. Young was to receive full payment for the land at the end of two years (R.103). However, full payment was never made as Mr. Young chose to discontinue the contract.

As a consequence the landfill was closed toward the end of June, 1971 (R.104). As partial compensation for terminating the contract Mr. Young assumed the cost of cleaning up the site. According to Mr. Nevius, between \$1000 and \$1500 was spent by Mr. Young for this purpose (R.108). Mr. Nevius testified that as of July 1, 1971, he no longer operated the landfill and presently has no interest in the property (R.104, 105).

At the hearing, counsel for Respondent contended that any action against Respondent would be improper because the Agency failed to notify Respondent of any violations prior to filing the complaint and because the complaint was filed after operations had been discontinued (R.146, 147). This argument is clearly without merit. Section 31(a) of the Act does not require that notice be given prior to the filing of a complaint but requires only that a written notice together with a formal complaint be served upon the person complained of. We note further that Respondent was informed by a letter dated September 16, 1970, that inspection had disclosed possible violations of the Act (Comp. Ex. 8). Neither does the Act require that a complaint be filed prior to cessation of the alleged violations. We will, therefore, consider the evidence as to the violations alleged in the complaint.

Respondent is alleged to have operated the refuse disposal site without obtaining a permit from the Agency in violation of Section 21(e) of the Act. Mr. Nevius testified that the State had conducted tests at the site in question and had approved its use as a landfill (R. 114). That Respondent did apply for a permit from the Agency is clear (Comp. Ex. 27). The record contains a letter dated October 16, 1968, from C. W. Klassen, then Chief Sanitary Engineer of the Department of Public Health, to Mr. Nevius stating that upon reviewing the application, the Department was "in a position" to approve the proposed landfill site (Comp. Ex. 22). We hold that Respondent did comply with the permit requirements of the Act and that no violation of Section 21(e) was shown.

The complaint alleges open dumping in violation of Sections 21(b) and 21(f) of the Act and of Rule 3.04 of the Land Rules. Open dumping is a general term which embraces a number of specific violations of the rules alleged elsewhere in the complaint. As in EPA v. Clay Products Co. et al., PCB 71-41 (June 23, 1971), our findings on the specific violations make a determination of open dumping unnecessary.

The Agency alleges that Respondent caused or allowed open burning of refuse in violation of Section 9(c) of the Act and Rule 3.05 of the Land Rules. Violations were clearly shown. On both August 25, and August 26, 1971, witnesses for the Agency observed wood and construction materials burning (R.11, 24). On neither occasion did anyone attempt to extinguish the fire.

Respondent is also alleged to have violated Rule 4.03(a) of the Land Rules, which Rule requires that the site be adequately fenced, with an entrance gate that can be locked, and that the hours and days of operation be clearly shown. The record indicates that the site in question is fenced so as to prohibit vehicular access and that a cable was used as a gate (R.43, 73). The gate was observed to be locked on several occasions (R.82, 85, 55). We find that the site was adequately fenced. There is evidence that access to the site was permitted at times when operating personnel were not present (R.43,44,53,116) but the complaint makes no allegation to this effect. Charles Clark, Acting Manager of the Agency's Division of Land Pollution Control, testified that he observed no sign or other indication of hours of operation during his visit to the site on August 26, 1970 (R.26). Mr. Nevius testified that he contracted with commercial concerns to handle construction wastes only. No one was permitted to deposit garbage in the landfill (R.111, 122). He added that a sign was posted at the site indicating that dumping was not allowed (R.116). We feel that such a sign satisfies the provisions of Rule 4.03(a) in that it informs the general public that refuse may not be brought to the site at any hour. It is unclear from the record whether Mr. Clark observed this sign or was referring only to the absence of a sign indicating specific hours of operation. We find the evidence as presented is insufficient to establish a violation of Rule 4.03(a).

The Agency further alleges that sufficient equipment was not available at the site to permit proper operation of the landfill, in violation of Rule 5.05 of the Land Rules. Although the record clearly indicates that the landfill was operated improperly at times, there is no evidence that insufficient equipment was available to do the job. A witness for the Agency testified that two "machines" were operating during his visit to the site (R.81). Mr. Nevius indicated that a tractor was kept on the site (R.116). We find that the Agency has failed to sustain its burden of proof and that no violation was shown.

Respondent is alleged to have violated Rule 5.07(a) of the Land Rules by failing to provide cover for all exposed refuse at the end of each working day. A witness for the Agency testified that refuse observed October 6, 1970, was observed uncovered the following day (R.42). There is also evidence that some refuse remained uncovered more than six months after the site had been closed (R.56). We find that a violation has occurred. We note in passing that conditions at the site have now been somewhat improved. Witnesses for the Agency indicated that by January 17, 1972, approximately two-thirds of the refuse at the site had received an adequate cover (R.73,96).

Respondent is also alleged to have violated Rule 5.08 of the Land Rules, which Rule prohibits the deposition of liquids at a landfill without written approval. On two occasions witnesses for the Agency observed a small amount of oil flowing down the face of the fill (R.41,62). Mr. Nevius testified that the source of the oil was a number of oil filters that had been deposited on the site (R.112). Respondent thus allowed materials which emitted a liquid to be placed in the landfill without having written approval to do so. We hold that this constitutes a violation of Rule 5.08.

The final allegation concerns the violation of Rule 5.12(a) of the Land Rules. Said Rule prohibits all scavenging operations at a landfill site. On April 19, 1971, an Agency inspector observed a man picking up material from the dumping area (R.68). According to the inspector, the man claimed he had permission to do so. This was denied by Mr. Nevius who testified that no one was given permission to conduct scavenging operations (R.115). Mr. Nevius admitted, however, that people frequently did pick up materials at the site without his permission. Such activity is expressly prohibited by Rule 5.12(a). Clearly, it was the responsibility of Mr. Nevius to see that no scavenging occurred at the landfill site. We find that a violation did occur.

In summary, we find violations with regard to open burning, provision of daily cover, deposition of liquids and scavenging. We shall assess a penalty for past violations of \$200. In order to assure that the landfill site will not be used further we shall order that no further infractions of the rules occur. We shall also order that the site not be reopened unless and until a valid permit is obtained from the Agency in accordance with the rules governing new landfill sites.

We note further that, according to Agency inspectors, approximately one-third of the refuse at the site remained uncovered as of January 17, 1972 (R.93,96). The efforts of Mr. Young to have the site cleaned up after it was closed have clearly been insufficient. Rule 5.07(a) of the Land Rules requires that a compacted layer of at least two feet of material be placed over the entire surface of all completed portions of the landfill within six months following the final placement of refuse. Failure to provide adequate final cover for the landfill in question evidently stems in part from the fact that refuse was deposited in a gully which was too steep for the refuse to be compacted and covered (R.144). Charles Clark testified that the only way to fill the gully properly would be to grade the slope off from the top. Obviously this must be done if the present deplorable conditions are to be rectified and the site brought into compliance with the rules. We feel that responsibility for providing proper final cover must rest with Respondent which operated the site until its closing June 30, 1971. We have no basis for recognizing a purported informal agreement between Mr. Nevius and Mr. Young for paying for the cost to properly close the site.

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

ORDER

1. Central Illinois Landfill, Inc. shall cease and desist from violations of the Rules and Regulations for Refuse Disposal Sites and Facilities and of the Environmental Protection Act.
2. The refuse disposal site operated by Central Illinois Landfill, Inc. in Kappa, Illinois, shall not be reopened unless and until a valid permit is obtained from the Environmental Protection Agency pursuant to Rule 1.03 of the Rules and Regulations for Refuse Disposal Sites and Facilities.
3. Central Illinois Landfill, Inc. shall by May 1, 1972, provide a proper final cover the landfill site at Kappa, Illinois, pursuant to Rule 5.07(b) of the Rules and Regulations for Refuse Disposal Sites and Facilities.
4. Central Illinois Landfill, Inc. shall, within 35 days of the entry of this order, pay to the State of Illinois the sum, in penalty, of \$200.00. Penalty payment by certified check or money order payable to the State of Illinois shall be made to the Fiscal Services Division, Environmental Protection Agency, 2200 Churchill Road, Springfield, Illinois 62706.

I, Christan L. Moffett, Clerk of the Pollution Control Board, certify that the Board adopted the above opinion and order this 2nd day of MARCH, 1972, by a vote of 4-0.

Christan L. Moffett

