

Respondent bought the dump in question in 1969 but has never applied for a permit. He states that he didn't know one was needed.

EPA investigators visited the site on a number of occasions. They found that active dumping was taking place over an area estimated at 15,000 square feet. Piles of household refuse were observed over a large area on several dates, however, the investigators always appeared at the landfill well before the closing hour and did not ordinarily return the following day. Therefore, they are unable to testify as to Respondent's daily covering activities and many allegations of open dumping and failure to cover remain unproved. Photographs taken on November 28 and 29, 1971 reveal the same uncovered debris and would definitely prove that Respondent failed to apply daily cover on November 28, 1971. However, no such violation was alleged for that date. We do find from photographs and oral testimony that open dumping occurred February 28, 1972. The bulldozer operator on that date told an EPA investigator that cover had not been applied in two weeks because of bad weather. A very large area of uncovered refuse is seen in photographs taken that date.

Blowing paper and litter were observed twice. The EPA investigator conceded that it is "impossible" to prevent paper from blowing on a windy day but it is precisely that fact which makes the portable fence a necessity for its containment.

This is the third prosecution of Jerry Frye for violations at his landfill. On the first 2 offenses in 1969 he was fined \$50 and \$200. We are concerned that Respondent has not been able to bring his operation into compliance with the law. The fact that he did not know that he should apply for a permit reveals a certain degree of carelessness in the operation of this business which bodes ill for the public. Carelessness in the collection of waste from 11,000 households could become a serious problem for environmental quality. For this offense we will impose a still larger penalty in the amount of \$500 to emphasize anew the necessity of coming into full compliance. We will grant Respondent a period of 45 days to obtain a permit and order him to close the landfill if a permit is not obtained in that time. He shall cease and desist from all other violations immediately.

Finally, it should be noted that a great number of allegations were made which, if proved, would have constituted a quite serious accumulation of violations and would have justified a higher penalty. However, the proof fell short of the allegation. The penalty we impose is in line with the proof.


ORDER

It is ordered that:

- (1) Respondent close his landfill if he has not obtained a permit for its operation in 45 days. Operation of the landfill shall not thereafter be resumed without a permit from the EPA.
- (2) Respondent immediately cease and desist from all other violations of the Environmental Protection Act and the Rules and Regulations for Refuse Disposal Sites and Facilities.
- (3) Respondent shall pay to the State of Illinois by December 1, 1972 the sum of \$500 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.

Mr. Dumelle dissents.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order was adopted this 17th day of October, 1972 by a vote of 4 to 1.


Christan L. Moffett, Clerk
Illinois Pollution Control Board