

ILLINOIS POLLUTION CONTROL BOARD
October 31, 1972

ENVIRONMENTAL PROTECTION AGENCY)
v.) #72-267
JESSE W. FARLEY, SR.)

Delbert D. Haschemeyer appeared for the Environmental Protection Agency;
James R. Potter, Springfield, Illinois, appeared for Respondent Farley.

OPINION AND ORDER OF THE BOARD (by Samuel T. Lawton, Jr.):

Complaint was filed by the Environmental Protection Agency against Jesse W. Farley, Sr., Respondent, alleging that on or about August 26, 1970 and on numerous subsequent occasions Respondent caused or allowed the open burning of refuse and/or conducted a salvage operation by open burning in violation of Section 9(c) of the Environmental Protection Act (Ill. Rev. Stat., 1971, Chapter 111 1/2, Section 1009(c), which prohibits the conduct of a salvage operation by open burning, Rule 2-1.1 of the Rules and Regulations Governing the Control of Air Pollution continued in effect pursuant to Section 49(c), which prohibits the conduct of a salvage operation by open burning, and Rule 502 of the Pollution Control Board Rules and Regulations, Chapter 3, Part V, effective September 17, 1971, which is a general prohibition against open burning subject only to specific exemptions and permits.

Respondent operates a wrecking yard where he engages in the business of salvaging used cars on a seven-acre tract of creek bottom land outside the Springfield corporate limits. Since August 26, 1970, Respondent operation has consisted of bringing the cars to the yard where he strips them of radiators and batteries (R. 6). Certain neighbors and relatives assist him in this operation (R. 33, 41, 52). The cars are then left for a Mr. Frye who "smashes them down and hauls 17 to 18 at a time" (R. 7). Respondent estimates that his business involves about 300 cars per year (R. 7).

Prior to the time covered by the complaint, Respondent alleges he had a variance for open burning (R. 26), but the variance apparently expired and was not reinstated. Since the date of expiration Respondent states he has never burned refuse from his operation (R. 26). Respondent also alleges he has

instructed his neighbors and relatives not to do any burning. However, he is aware that burning has taken place in his yard, and does not appear to have taken any affirmative steps to prevent its recurrence.

The record supports the allegations of open burning of auto bodies at Respondent's salvage yard on August 26, 1970 (R.10), September 18, 1970 (R. 11), April 9, 1971 (R.18-20), and June 22, 1972 (R. 24). We believe that the Agency has sustained its burden of proof by establishing that Respondent caused or allowed the open burning of automobiles, in violation of Section 9(c) of the Environmental Protection Act, Rule 2-1.1 and Rule 502. Respondent alleges that the open burning has been caused by trespassers (R.29) and stray sparks from his cutting operation (R.28) in which an acetylene torch is used. However, as we stated in Environmental Protection Agency v. J. M. Cooling, #70-2, 1 PCB 85 (1970), where we assessed a \$1,000 penalty because of unintentional but negligent conduct leading to open burning: "Negligence, indifference and slipshod operation of a facility having a high potential of combustion, falls within the purview of the statute and regulations." (At 1-94). We believe Respondent's conduct falls within this Rule.

We assess a penalty in the amount of \$250.00 for these violations. In arriving at this penalty figure, we give consideration to Respondent's apparent lack of intention to burn and the relatively small size of his operation. However, we order Respondent to cease and desist all violations of the Act and Regulations and engage in better supervisory and policing measures to make his site less attractive to trespassers, and to take affirmative steps to prevent any recurrence of open burning.

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

IT IS THE ORDER of the Pollution Control Board that:

1. Respondent, Jesse W. Farley, Sr., doing business as Farley Salvage Yard, shall cease and desist the operation of his Springfield, Illinois salvage yard, in violation of the Rules and Regulations Governing the Control of Air Pollution and violation of the Environmental Protection Act (Ill. Rev. Stat., 1972, Chapter 111-1/2).
2. Penalty in the amount of \$250.00 is assessed against the Respondent for the violation of Section 9(c) of the Environmental Protection Act, and Rule 2-1.1 of the Rules and Regulations Governing the Control of Air Pollution, continued in effect pursuant to Section 49(c) of the Act, and Rule 502 of the Pollution Control Board Rules and Regulations, Chapter 2, Part V, effective September 17, 1971. Payment shall be made within 35 days by certified check or money

order payable to the State of Illinois, and sent to:
Fiscal Services Division, Illinois Environmental Protection Agency, 2200 Churchill Road, Springfield, Illinois 63706.

3. Respondent shall take affirmative steps to secure entrance to his salvage yard against trespassers; such steps shall have the approval of the Environmental Protection Agency. Respondent shall permit representatives of the Environmental Protection Agency to enter his premises at reasonable hours for inspection of the facilities to determine whether the operation is in compliance with the applicable statutory and regulatory provisions.

I, Christan Moffett, Clerk of the Illinois Pollution Control Board, certify that the above Opinion and Order was adopted on the 31st day of October, 1972, by a vote of 5 to 0.

Christan T. Moffett

