

ILLINOIS POLLUTION CONTROL BOARD
 February 17, 1971

ENVIRONMENTAL PROTECTION AGENCY)
)
 v.)
)
 ELI AMIGONI)

#PCB 70-15

Opinion of the Board (by Mr. Kissel):

The Environmental Protection Agency filed a complaint against Eli Amigoni, alleging that from July 24 to July 31, 1970, he had permitted the open burning of refuse, the open dumping of refuse, the operation of a refuse disposal site in violation of existing rules and regulations, and the disposal of refuse in standing water, all in violation of various provisions of the Environmental Protection Act, of the Rules and Regulations Governing the Control of Air Pollution, and of the Rules and Regulations for Refuse Disposal Sites and Facilities. The Agency sought the entry of a cease and desist order against the Respondent and the imposition of a penalty in the amount of \$10,000 for each violation and \$1000 for each day such violation shall be shown to have continued. An amended complaint filed on the day of hearing also alleged similar violations on October 6 and 7, 1970; it also contended that, within the same two time periods, Amigoni had disposed of garbage and other contaminants from the refuse disposal site in such a manner as to create a water pollution hazard, in violation of Section 12(d) of the Environmental Protection Act.

On the date of the hearing, December 12, 1970, Respondent filed an oral petition for a variance and presented testimony at the hearing to substantiate his variance request. Amigoni sought a variance for 90 days, during which time he would only be required to cover the refuse once a week, though dumping would occur twice a week.

The Board has ordered the variance petition to be consolidated with the enforcement action. In order to consolidate the two actions, one procedural point must be dealt with. Section 37 of the Environmental Protection Act requires public notice to be given and an Agency investigation undertaken when the Board is in receipt of a variance request. The issues in the two cases (enforcement and variance) are identical in this instance, and the requisite statutory notices were published prior to the enforcement hearing, further giving of such prior notices in the variance case is unnecessary. This, plus the fact that the Agency most assuredly investigated the enforcement case before bringing it, serves the purpose of the Act of giving the public adequate opportunity to participate. Since the decision of the Board to hold a hearing in a variance case is a discretionary one by statute, it is concluded that a further hearing in this case would be unnecessary.

The evidence offered in the case regarding the illegal operation of the refuse site was without substantial disagreement. There was no question that Amigoni was operating a refuse disposal site and that he did not cover or compact the refuse pile as was required by the applicable rules and regulations governing the operation of such refuse disposal facilities. In fact, Amigoni even admitted that not only did he not cover the face of the pile, but he estimated that he did not cover the refuse pile more than once every two weeks. (R. 69) Further, he specifically admitted that during the time complained of he did not cover the refuse pile at all. (R. 12, 14, 22, 27, 35)

Several witnesses testified that during their visits to the Amigoni site they witnessed open burning of refuse. (R. 12, 26) In fact, one of the Agency witnesses actually witnessed a driver of a garbage truck owned by the Village of Roanoke dump his load and start the refuse which had just been dumped on fire. (R. 50) Even Russell Charlett, a neighbor, witnessed smoke emanating from the Amigoni site, generally after a visit by the Village of Roanoke garbage truck. (R. 45) Amigoni professed not to know about the burning on his refuse site by the Village of Roanoke. He testified that he was aware that Pfister's Seed Company did do some burning at the site under the direction and supervision of the State Department of Agriculture. (R. 53) Amigoni's lack of knowledge of burning on his site cannot be considered a defense to this action. Since he was the operator of a refuse disposal site, he should have known that there may be abuses by those who dumped there, and that those persons would use the illegal means of open burning to dispose of their wastes. It would seem, and this Board so holds, that Amigoni is in the same position as Mr. Neal in the case of the Environmental Protection Agency v. Harry Neal, PCB 70-5. In that case witnesses testified that a truck was burning on the site of an auto salvage operator. Mr. Neal, as Mr. Amigoni did in this case, attempted to defend himself by saying that he had no knowledge of the fire. This Board, however, stated that since Mr. Neal in his auto salvage business could reasonably anticipate that autos would indeed catch fire, even accidentally, he should be constantly aware of that possibility. If a fire did occur, the burden would shift to Mr. Neal to prove that the fire occurred accidentally. It would seem that the same principles should apply to the case at hand. Mr. Amigoni did not sustain his burden of proof that the fires were accidental, or even further, that he had the adequate surveillance of the site to even determine if a fire were taking place. In addition to the shifting of the burden of proof as we found in the Neal case and our finding here, an owner of a refuse disposal facility must be responsible for the actions of those who he allows to dump refuse on his property. If such persons use open burning to dispose of their refuse on his facility, it will be presumed that such is allowed and consented to by the owner of the refuse facility. An owner of such a facility has a duty to supervise its operations and to stop open burning on his premises whether by himself or by those who he allows to do so.

Although, as pointed out above, the Agency met its proof with regard to the illegal operation of a refuse disposal facility, and

the illegal open burning of refuse, the Agency did not prove that Amigoni operated his refuse disposal facility so as to create a water pollution hazard. The evidence was clear that the standing water nearby the refuse facility was probably there only after periods of heavy rain, and further there was no evidence as to the water quality in the standing water, or how it was, if at all, deteriorated as a result of the operation of Amigoni's refuse facility. In addition, there was no evidence in the record that the water was there before the refuse was dumped, and therefore, the regulations regarding water pollution were not violated.

We must now deal with the petition for variance filed by Amigoni.

He requests 90 days within which he may continue in violation of the applicable rules and regulations as to compacting and covering. He seeks permission to cover the refuse once a week instead of twice a week, as the dumping schedule would demand. To sustain his proof that compliance with the Rules and Regulations would impose an arbitrary and unreasonable hardship, Respondent, in his petition, cites the following considerations:

1. The Village of Roanoke whose refuse chiefly fills the site would like to continue collecting garbage twice a week as the citizens have become accustomed to it.
2. Operation within the Rules and Regulations would impose additional expense upon the Respondent who is now operating this site at no profit to himself.
3. Respondent would conduct no burning on the site.
4. Respondent is making a thorough investigation to see if it would be profitable or feasible for him to operate a solid disposal site on this location and, if so, he would file an application with the State Department of Health to determine whether the site can be approved. If it is approved, then he would operate within the Rules and Regulations of the Pollution Control Board.

Additionally, in the testimony offered in the course of the enforcement hearing, Respondent indicated that compliance would prove difficult due to the present winter weather. The petition indicates, however, that Respondent would find it possible to cover and compact once a week; with the ready availability of equipment which Respondent enjoys, no reason appears to this Board why if compacting and covering can be done once a week it cannot just as well be done on the two occasions when dumping occurs.

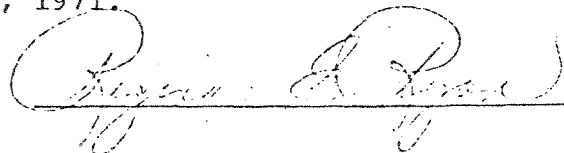
Though Respondent states that he is operating the site "at no profit to himself," the testimony offered at the hearing casts some doubt upon that contention. Amigoni testified that he spent an average of \$2500 per year to operate the site. In return, he received \$2000 per year from the Village of Roanoke and \$125 in seed corn from Pfister's. (R. 86, 54-65) The dump site is not merely that, but is being used by Amigoni for the removal of gravel

and then the conversion of the exhausted areas of the gravel pit into tillable farmland. (R. 55) Further, Amigoni hires and pays no one especially for the covering and compacting done approximately every two weeks. It is only when his construction employees are free or when they are hauling out gravel that the dump is covered over. (R. 67, 68) It is difficult to understand what "arbitrary or unreasonable hardship" would be imposed on Amigoni if he were required to comply with the law. He has the machines, the men and the time to operate this facility the way it should be operated, and to operate it otherwise could cause harm to the people of the State of Illinois. The variance is hereby denied.

The Board hereby enters the following order:

1. Amigoni is to place the site in compliance with the Rules and Regulations for Refuse Disposal Sites and Facilities, particularly with regard to Rules 5.06 and 5.07 for covering and compacting.
2. Amigoni is to cease and desist the open burning of refuse or the causing of open burning of refuse, in violation of Section 9(c) of the Environmental Protection Act, and Rules 2-1.1 and 2-1.2 of the Rules and Regulations Governing the Control of Air Pollution and Rule 3.05 of the Rules and Regulations for Refuse Disposal Sites and Facilities.
3. Amigoni is to cease and desist the open dumping of refuse or the causing of open dumping of refuse in violation of Sections 21(a) and (b) of the Act and of Rules 3.04, 5.06 and 5.07 of the Rules and Regulations for Refuse Disposal Sites and Facilities.
4. Amigoni is to cease operation of the refuse disposal site in violation of Rules 5.05, 5.06 and 5.07 of the Rules and Regulations for Refuse Disposal Sites and Facilities.
5. If Amigoni should decide to cease operations on the site, he shall comply with Rule 5.07(b) of the Rules and Regulations for Refuse Disposal Sites and Facilities requiring two feet of final cover within six months of the final placement of refuse.
6. Amigoni shall remit to the Environmental Protection Agency the sum, in penalty, of \$1500.00.

I, Regina E. Ryan, Clerk of the Pollution Control Board, certify that the Board adopted the above opinion and order this 11th day of February, 1971.



10