

ILLINOIS POLLUTION CONTROL BOARD

August 13, 1971

ENVIRONMENTAL PROTECTION AGENCY)
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 v.) # 71-42
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)
 J. C. DILL)

Mr. F. Daniel Welsch, Special Assistant Attorney General, for EPA
 Mr. J. C. Dill, pro se.

Opinion of the Board (by Mr. Currie):

Mr. Dill was charged with a number of violations of the Rules and Regulations for Refuse Disposal Sites and Facilities (Landfill Rules) in the operation of his landfill near Georgetown. Two of the alleged violations (counts 5 and 9) were dropped by the Agency at the hearing on June 17, 1971, (R. 8). We find several of the charges well proven and impose a money penalty and a cease and desist order.

The first count of the complaint alleges open dumping in violation of both Section 21 of the Environmental Protection Act and of Rule 3.04 of the Landfill Rules. Open dumping is a general description of a practice which entails a number of specific violations of the rules alleged elsewhere in the complaint. As in EPA v. Clay Products et al., # PCB 71-41 (June 23, 1971) our finding on the specific violations make a determination of open dumping unnecessary.

Count 2 of the complaint alleges open burning in violation of Section 9(c) of the Act and Rule 3.05 of the Land Rules. There is ample testimony by EPA inspectors as to the existence of open burning at the site on November 5, 1971, (R. 66, 102, 117, Ex. 5-G) and on February 20, 1971 (R. 60-62, Ex. 6A and 6B). In addition a neighbor who lives "half a block" from the site testified that fires occur once or twice a week (R. 190). An employee of the respondent testified that the two reasons fires started were embers from trash fires dumped into the pick-up truck and vandals (R. 158-161). We agree with the Agency's contention that for Agency investigators to find actual open burning or the evidence of recent burning on virtually every occasion an inspection was made cannot be blamed upon coincidence. Further, reasonable care in the collection of burning materials and action such as the installation of a locked

gate to help exclude vandals would obviously have prevented many fires. Proper cover and compaction of refuse would have minimized and shortened other fires. Respondent has caused or allowed open burning.

Count 3 charges that Mr. Dill failed to provide his site with a lockable gate in violation of Land Rule 4.03 (a). The respondent conceded that the gate or the road leading to the disposal area is not provided with a lock (R. 19). Mr. Dill's defense that he is running not a landfill but a farm is unacceptable. A violation was shown.

Count 4 alleges that Mr. Dill has operated his site without an all weather operational road as required by Rule 4.03 (b) of the Land Rules. There is evidence that the road in question although surfaced with some kind of rocks or gravel had become so rutted that it would likely be impassable in wet weather (R. 67-68, 104). Respondent's contention that a blacktop road is called for is not supported by a review of the regulations, but something more than a heavily rutted "farm" road is definitely required. There is proof of a violation.

Count 6 alleges that refuse was not covered at the end of each working day as required by Rule 5.07. Violations were clearly shown. Mr. Lorimore, an EPA investigator, testified that refuse viewed on November 5, 1971 had not been covered by the next day (R. 68-69). An Agency photographer provided additional evidence of the failure to cover during the period of November 5-6, 1971 (R. 99-103, Ex. 5-A, 5-B, 5-C, 5-E, 5-G).

Count 7 charges that completed portions of the landfill have not been provided appropriate final cover as required by Rule 5.07 (b). An Agency witness testified that the upper portion of the ravine needs additional final cover to meet the requirement of at least two feet of compacted material (R. 69-70). His testimony was not challenged.

Count 8 alleges that Mr. Dill permitted improper salvage operations at his landfill site in violation of Rule 5.10 of the Land Rules. If material is to be salvaged the rules specify the salvage operations should be confined to areas remote from the fill. Photographs taken on November 5 and 6, 1971 (Ex. 5-A and 5-B) clearly show junked automobiles in the operating area of the landfill. However, Mr. Ray Adams, a neighbor of Mr. Dill, testified that the autos are used as an "anchor" to keep the filled areas from being washed down the steep gullies which constitute the landfill area and are not salvaged. Since there is no evidence that respondent intended to do anything with the automobiles other than bury them this charge is really a continuation of Count 6. If the autos are to be buried they must be covered

by the end of the working day that they arrive on the site. In addition, Agency witnesses testified that the automobiles and a pile of lumber were in violation of Rule 5.10 because they were not elevated above the ground and thus created a rodent harborage (R. 71-72, 123-124). The rules say nothing about elevating salvaged materials although the Agency has obviously inferred this requirement as being necessary to prevent rat harborage. We suggest that if the Agency feels elevating automobiles is needed it should propose that the regulation be revised to specifically include that requirement. We find no violation of Rule 5.10.

Respondent sought to deflect the charges brought against him by maintaining that his operation is only a farm and not a landfill (R. 176). Although respondent's intentions of reclaiming strip mined land for agricultural use are commendable it is clear that the means he has chosen for that reclamation is the operation of a landfill.

We find violations with respect to open burning, lack of a lockable gate and an all weather road, and failure to daily and finally cover refuse. We shall order that no further infractions occur and in consideration of respondent's economic and family problems assess a modest \$200 penalty. Although we have assessed this nominal penalty in the face of the repeated warnings and visits by Agency representatives we assure Mr. Dill that continued operation of his landfill in violation of the law will result in greatly increased penalties.

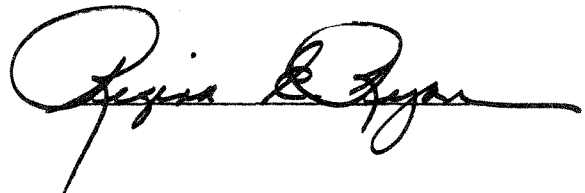
This opinion constitutes the Board's findings of fact and conclusions of law.

ORDER

1. Mr. J. C. Dill shall cease and desist from violations of the Environmental Protection Act and of the Rules and Regulations for Refuse Sites and Facilities, as follows:
 - a) No open burning shall be allowed.
 - b) The site shall be provided with an entrance gate and lock.
 - c) Refuse shall be covered daily as required by the Rules.
 - d) Completed portions of the site shall be covered in accordance with the Rules within 60 days of the date of this order.
 - e) The road to the site shall be graded to level the ruts and provided with a layer of gravel.

2. Mr. J. C. Dill shall within 35 days after receipt of this order pay to the State of Illinois the sum of \$200.00 as a penalty for the violations found in the Board's opinion.

I, Regina E. Ryan, Clerk of the Pollution Control Board, certify that the Board adopted the above Opinion this 13th day of August, 1971.

A handwritten signature in cursive script, reading "Regina E. Ryan". The signature is written in black ink and is positioned to the right of the typed text.