ILLINOIS POLLUTION CONTROL BOARD
July 8, 1971

Environmental Protection Agency	)	
v.	)	PCB 71-43
Lipsett Steel Products, Inc.	)	

J.H. Keehner, Assistant Attorney General of Illinois for the Environmental Protection Agency

R.E. Robertson, for Lipsett Steel Products, Inc.

Opinion of the Board (by Mr. Dumelle)

This enforcement action was filed on March 9, 1971 and alleged violations of section 9(a) and 9(c) of the Environmental Protection Act (Act) Ill. Rev. Stat. ch. 111-1/2 §§ 1009(a) and 1009(c) and Rules 2-1.1 and 2-1.2 of the Rules and Regulations Governing the Control of Air Pollution. Specifically the complaint alleged that the respondent Lipsett Steel Products, Inc. (Lipsett) conducted the open burning of various railroad cars and related equipment on seven separate occasions, December 16, 1970, January 26, 27 and 28, and February 1, 9, and 20, 1971. The Environmental Protection Agency (EPA) asked that the company be ordered to cease and desist its open burning and that the company be penalized up to $10,000 for each of the alleged violations (plus $1,000 per day for each day that the violation continued).

At the hearing held on May 17 in Alton, Lipsett responded to six of the assertions of violation by admitting that burning in the open had occurred on the seven days in question (R.20). On each day the burning had been blower assisted and counsel for the company characterized the EPA's prosecution of the open burning in such a situation as the "technical" application of the law (R.25). As for the date in December 1970, counsel for the company stated that no violation could be charged as the company was then operating under a variance granted by the old Air Pollution Control Board.

We have had occasion to consider Lipsett's operations in an earlier case. On March 22, 1971 we decided against granting the compan a variance to continue open burning in connection with its salvage operations (PCB#70-50). At that time we reviewed Lipsett's operations. The Granite City site is part of a substantial interstate enterprise at which several hundred railroad cars per year have been burned since 1957. The cars are burned to recover their scrap

iron (and other metals) content for sale as raw material to metal reprocessors. Just north of the salvage operation are a number of residences whose occupants have vigorously complained about the air pollution emanating from Lipsett's operations. What we said in our earlier opinion is well repeated on this occasion. 1]

> Lipsett is no small polluter, and the site of its burning operations is not remotely located. The neighbors made clear, and the EPA confirmed, that the results of blower-assisted burning are rather foul. Each car contains 6000 to 7000 pounds of wood (R.21). There is tar in boxcar roofs and grease on the axles (R.246), and oil is used to ignite them (R.169). Refrigerator cars, which the company also wants to burn, are even worse, since they contain not only wood but "other non-metallics such as the insulation" (R.38). All 50 cars now stored on the site are refrigerators (R.74). Petitioner's Exhibit I is a film showing two boxcars burning side-by-side, one with a blower in operation and the other unassisted. After an initial startup period during which time emissions from the car being burned with the aid of a blower are as thick if not thicker than those from the other car, there is an obviously noticeable visual difference in the opacity of the emissions from the two cars. The company's witnesses said this startup period lasted only "twenty or thirty seconds", or "30 to 45 seconds" (R.169, 220), but they were contradicted not only by EPA testimony that the dark emissions lasted for ten minutes (R.286), but by the persuasive visual evidence of the company's own film. In either event we are not prepared to require the community to endure even thirty seconds of such foul air. An EPA engineer testified that the smoke emitted during the startup, even with a blower, was #5 Ringelmann (R.286), and we think that the public should not have to bear exposure to emissions of this sort.
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> The film leads us to believe that the blower assistance greatly reduced the duration of the emissions of thick black smoke from the burning car. Total burning time is two hours (R.247), and the emissions after the initial startup period, while significantly reduced, are far from pleasant. Even

1] Opinion of the Board, PCB #70-50, p. 3. References are to pages in the transcript which is Complainant's Ex. A in the instant case.

> though the blower-assisted burning may be better than unassisted burning, we are not prepared to say that the effect on the community of the emissions from this process is tolerable. Driving at 70 m.p.h. in a 60 m.p.h. zone may not be as dangerous as driving at 80 m.p.h. would be, but it is in any event unacceptable and a clear violation of the law.
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> Nor is all harm avoided by burning only when winds are from the north; not only can a wind shift cause odor and dirt problems on residential property (R.180-181), but the visual nuisance and the considerable contribution to the serious particulate problems of the St. Louis area remain. We cannot say that clouds of smoke (R.182) are acceptable within sight of downtown St. Louis just because they are blown away from the nearest homes.

The history of delay and inaction in complying with the law against open burning is abundantly clear in this case. Open burning salvage operations have been outlawed in Illinois since 1965. Not until May of 1969 did Lipsett file a program for reducing air contaminants (ACERP) with one of this Board's predecessor, the Air Pollution Control Board. In their program the company stated that they would cease the practice of open burning no later than December 31, 1970, the date by which the company was granted permission to continue its open burning operations exempt from the operation of the law. On December 28, 1970 Lipsett filed a variance application requesting to have its ACERP exemption extended until June 30, 1971. Quite obviously such a request could not be considered before the company's freedom from prosecution ran out two days after the date of filing of their petition. The company well knew that their variance expired on December 31, 1970. The company came before the Board at the Board's regular meeting on January 18, 1971 and in effect argued an ex parte motion for emergency relief to be allowed to open burn with impunity until their variance request, filed on December 28, 1970 had been acted upon in the normal course of events. The Board voted to deny the request for expedited consideration of the company's request (January 18, R.39) and a hearing was subsequently held on the company's variance petition. The Board denied the variance request on March 22, 1971.

We have discussed the operation and viability of continuing ACERP's in other cases (See EPA v. Commonwealth Edison, PCB 70-4; EPA v. M.S. Kaplan Company, PCB 71-50) and have stated that although the protection afforded by such a program can only extend for one year from the date of its inception (May 1969 in this case) this Board is not inclined to impose money penalties on a company who in good faith has adhered to an approved program. We therefore agree with Lipsett that they should not be penalized for the open burning violation on December 16, 1970. As for the other dates it is beyond dispute that the company undertook the 6 specific instances of burning knowing that they were not in any manner covered by the previous exemption from prosecution.

Lipsett contends and it is uncontroverted that on the six occasions in which they burned railroad boxcars an improved method of incineration was used. Gas-fired blowers were employed which Lipsett stated was a 90% more effective method than the simple ignition and unaided combustion of boxcars in the open. This assisted combustion is apparently the reason why Lipsett refers to its violation as "technical". We find such combustion of boxcars to be open burning and legally no less onerous than the unassisted incineration of salvaged railroad cars. Ample evidence of the character of such burning is contained in the record of the variance hearing and has been referred to above. Because the salvage operation by open burning, even when assisted by the gas-fired blower, cannot be adequately controlled, the wood and other combustible material must be removed in some other acceptable manner or not removed at all.

Our principal determination in this case is thus not whether or not a violation has occurred, for six violations are admitted to, but rather what is an appropriate penalty for the violations. The Environmental Protection Act specifically states that "No person shall...conduct any salvage operation by open burning" and further provides for penalties as much as $10,000 per occurrence plus $1,000 for every additional day of violation. [2] Lipsett's violation of the open burning ban was intentional and with full knowledge of the possible consequences. The six separate violations are serious infractions of the open burning ban for which we impose a fine of $1,000 per occurrence for a total penalty of $6,000. Further we order Lipsett to cease and desist any and all open burning salvage operations.

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

ORDER

1. A penalty in the total amount of $6,000 is assessed against Lipsett Steel Products, Inc. for six separate occurrences of open burning in contravention of the Rules and Regulations Governing the Control of Air Pollution and the Environmental Protection Act, § 1009(c). The penalty shall be paid to the State of Illinois on or before August 9, 1971.

2. Respondent is hereby ordered to cease and desist all open burning salvage operations.

2] Illinois Rev. Stat. ch. 111-1/2 § 1009(c), §§ 1042

I, Regina E. Ryan, Clerk of the Pollution Control Board, certify that the Board adopted the above Opinion and Order this 8 day of July, 1971.