

ILLINOIS POLLUTION CONTROL BOARD
July 22, 1971

ENVIRONMENTAL PROTECTION AGENCY)
)
) #PCB71-48
 v.)
)
CITY OF GOLCONDA)

LARRY EATON, Assistant Attorney General, for EPA
LESTER SEXTON, Mayor of Golconda, for Respondent

OPINION OF THE BOARD (BY MR. LAWTON):

The Environmental Protection Agency filed a complaint against the City of Golconda asserting that the city operated a sanitary landfill site in the Shawnee National Forest and that its operation constituted violations of various sections of the Environmental Protection Act ("Act") and of the Rules and Regulations for Refuse Disposal Sites and Facilities (Land Rules), promulgated by the Department of Public Health in April of 1966 and remaining in force and effect pursuant to Section 49(c) of the Act.

Specifically, the complaint alleges that on September 29 and September 30, 1970, and continuing through the date of the filing of the complaint, the city has allowed open dumping of refuse at its landfill site in violation of Sections 12(a) and (b) and Section 20 and Section 21(a), (b) and (f) of the Act, and Rule 3.04 of the Land Rules.

The complaint further alleges that on September 29, 1970 and continuing intermittently to the date of the filing of the complaint, Respondent allowed open burning at the landfill site, in violation of 3.05 of the Land Rules and Section 9(c) of the Act.

The complaint further alleges that on or about September 29, 1970, and continuing through the date of the filing of the complaint, Respondent permitted, allowed or failed to do the following: permitted access to the site at all hours, in violation of Rule 5.02; allowed unsupervised unloading in violation of Rule 5.04; failed to compact and spread refuse in violation of Rule 5.06; failed to provide a 6" daily cover of refuse, in violation of Rule 5.07(a); failed to register its site in violation of Rule 1.03, and caused scenic blight, created a public nuisance, diverted land from more productive use, depressed the value of nearby property, offended the senses and otherwise unduly interfered with community life resulting in pollution and misuse of land, all in violation of Section 20 of the Act.

We find Respondent to have allowed open dumping of refuse; to have allowed open burning; to have permitted unauthorized access to the site; to have allowed unsupervised unloading; to have failed to spread and compact the refuse; and to have failed to provide a 6" daily cover. All of the foregoing acts or conditions to be in violation of the statutory and regulatory provisions asserted. Section 20 of the Act is not a regulatory provision and does not serve as a ground for alleged violation of the statute. Accordingly, we find Respondent not to be in violation of this specific section, notwithstanding the fact that its operation may have been contrary to the objective sought to be achieved by this provision.

We order the city to cease and desist the operation of its landfill facility in violation of the regulations and the Act, and to take such affirmative steps as are more fully set forth in the decretal portion of this Order.

Hearing was held on the complaint of the Agency at the Golconda Court House on June 1, 1971. The landfill has been in operation for approximately four years. Lester Sexton, the mayor of Golconda, appeared as both an adverse witness for the Agency and principal witness for the municipality. He testified that the landfill is presently operated by Leonard Wallace, who gets a nominal salary from the city, and also a portion of the charges made for the garbage pick-up. Mr. Wallace was on the premises two days a week. Mr. Sexton testified that the size of the site was approximately 100 feet by 150 feet, although other testimony suggests that it might be somewhat larger. Approximately an acre has been used in the last four years since the beginning of the operation. Notwithstanding the fact that the site is a municipal operation, other people within the county have been using the site without apparent authorization nor does it appear that the city has established an aggressive policy to prevent unauthorized use. The site is located on property owned by the Federal government in Shawnee National Forest.

Photographs taken by Andrew Vollmer, employed by the Environmental Protection Agency, taken on September 29 and September 30, 1970, establish the principal contentions of the complaint. Vast quantities of open garbage and refuse can be observed and the absence of compacting or covering is evident.

Testimony of Gary Brashear, Sanitary Inspector of the Environmental Protection Agency, established that on the same dates, the facility was accessible through its open gate and that the fencing was inadequate. Open dumping and the absence of compaction and cover were evident, as was the result of open burning.

These conditions were further testified to by Gene Hatfield, Sanitary Inspector for the Environmental Protection Agency, who had conducted inspections from April 1, 1969 through May 7, 1971, including the September 29 and 30 dates on which occasions he observed exposed refuse and the absence of supervision. Garbage, boxes, refrigerators and comparable refuse was observed on each occasion. Supervision did begin on or about April 13, 1971, at which time some equipment necessary to eliminate the violations was utilized. Open burning of garbage and refuse was observed by this witness on November 25, 1970.

Both the mayor and the operator, Mr. Wallace, testified that without additional funds the operation could not be improved. They conceded that the present site was inadequate for their purposes and expressed the hope that a county landfill site would be established. The penalty we impose is in consideration of the foregoing operation. The testimony of the site operator, Mr. Wallace, is illustrative of how the operation had been handled until approximately March 16, 1971. His activities were in direct relation to when the city obtained funds "When the city got the money to get the work done, they called me, I would go out and dig a trench, push the garbage in and cover it." (R.79). He testified that the trenches dug were roughly 10 feet wide, 4 to 8 feet deep and 125 feet long. They occasionally would take as long as two months to fill up, although occasionally only a month. (R.80). In response to questions as to the amount of cover, the witness stated: "Now, on that, the amount of fill, some places it was 6", some places it was a foot deep, but what caused the trouble on the amount of cover that is over it, is that well, in my opinion, it was set up wrong and started from the front to the back, and you would cover an old ditch, and that is where people would throw the garbage, and you would have to push it off the old ditch onto the new one, and you would get so much of your fill of the garbage each time." As a consequence, the previous cover was pushed off in digging or filling a later trench necessitating additional fill and covering. (R.81).

Efforts were made to increase the frequency of fill and cover but Mr. Wallace's activities do not appear to be on more than a monthly basis. During the intervening period, "people come in to dump, they drive up to the curb of the road and dump it in the road. They wouldn't go for the ditch because they would have to cross fresh fill, and maybe get their shoes muddy, and they dumped it on the road. So when I go back out the end of the week, I would have to push it from almost the front gate to the back side of the land fill." (R.83). Since approximately March 16, 1971, Mr. Wallace has been present between 10:00 A.M. and 7:00 P.M. on Tuesday and Thursday and that he now endeavors to cover the refuse on these days but that a substantial amount of garbage is still thrown by persons over the locked gate, and represents a continuing problem. He testified that because the dump is open until

7:00 P. M. at night, it is often impossible to compact and cover on the same day the garbage is received, because of darkness.

Wayne Nichols, employee of the U. S. Forestry Service, testified that the dump was operated pursuant to permit issued by the U. S. Government to the City of Golconda, which required the operation be in compliance with the State law. Originally, the Job Corps was to work jointly with the city in maintaining the site but this program did not continue. According to the testimony of this witness, the conditions of the permit have been violated but not enforced, because of the necessity of having a place to dump. A new permit is being presented to the city. The witness indicated the U. S. Forestry Service does not want the dump to remain in the present location.

J. C. Wright, Planning Analyst, Southeastern Illinois Regional Planning and Development Commission, testified to the desire of having a county-wide landfill operation which would serve 3,900 people and require an expenditure of approximately \$39,000.00 to acquire, develop and equip. State financing has been sought. He testified to the "promiscuous dumping along the highways out there by the site. People dump after hours...many people do not work on Saturday, they therefore take the refuse out there and the site is closed. So they dump into ditches or they carry it over by hand...they dump near the front of the site..."(R.104). He testified that since the middle of March, 1971, there has been considerable improvement in the operation of the site in terms of supervision, covering and the absence of burning. He recommended that the site be open on Saturdays until Noon.

The Board wholeheartedly concurs in the desirability of having a county-wide landfill facility which would serve a greater area and more people than the present Golconda operation. The Board stands ready to assist in any way possible toward the realization of this objective. If, in the meantime, the Golconda operation is to continue, it must be brought into compliance with the law. Accordingly, we enter our Order hereinafter set forth directing the Respondent to cease and desist the various illegal operations it has conducted or permitted and to take such further steps as are appropriate in consideration of its continued operation. A nominal penalty is imposed.

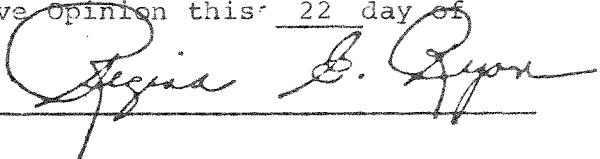
This Opinion constitutes the findings of fact and conclusions of law of the Board.

IT IS THE ORDER of the Pollution Control Board, as follows:

1. Respondent, City of Golconda, is found to have violated the following regulations and statutory provisions during the period alleged as hereinafter set forth:

- (a) Open dumping of refuse in violation of Section 12(c) and 12(b) of the Environmental Protection Act and Section 21(a), (b) and (f), and Rule 3.04 of the Rules and Regulations for Refuse Disposal Sites and Facilities;
 - (b) Open burning in violation of Rule 3.05 of the Rules and Section 9(c) of the Act;
 - (c) Unlimited access to the site at all hours of the day in violation of Rule 5.02 of the Rules;
 - (d) Unsupervised unloading in violation of Rule 5.04 of the Rules;
 - (e) Failure to spread and compact refuse in violation of Rule 5.06 of the Rules;
 - (f) Failure to provide 6" daily cover for refuse in violation of Rule 5.07 of the Rules;
 - (g) Respondent is not found to have violated Section 20 of the Act. The evidence does not establish a violation of Rule 1.03 relative to registration.
2. The City of Golconda is ordered to cease and desist all activities and violations above set forth in paragraph 1 of this Order.
 3. City of Golconda is assessed a penalty in the amount of \$100.00 for the violations aforesaid.
 4. The City of Golconda is directed in the operation of its landfill to refrain from accepting refuse less than two hours before sunset in order that spreading, compacting and covering can take place on the same day such refuse is received. The city is further directed to keep its landfill operation open on Saturdays until 12 o'clock Noon.

I, Regina E. Ryan, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion this 22 day of July, 1971.



Regina E. Ryan