

ILLINOIS POLLUTION CONTROL BOARD  
July 22, 1971

ENVIRONMENTAL PROTECTION AGENCY )  
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 )  
 v. ) # 71-49  
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 DONALD M. ASHBAUGH )

Mr. George E. Brazitis, Special Assistant Attorney General  
for the EPA.

Mr. Donald Ashbaugh, pro se.

Opinion of the Board (by Mr. Currie):

Mr. Ashbaugh was charged with numerous violations in regard to the operation of a landfill near Effingham. We find two of the charges amply proved and impose money penalties as well as a cease-and-desist order.

Open dumping of refuse is and has long been forbidden (Environmental Protection Act, § 21; Rules and Regulations for Refuse Disposal Sites and Facilities, Rule 3.04). The operator is required to spread, compact, and cover refuse regularly. There is much evidence as to open dumping long before August 10, 1970 (R. 22-38), the first date charged in the complaint, but the respondent is entitled to notice of the charges he must defend against, and we think it time the Agency stopped trying to prove violations that are not charged. The same applies to evidence showing purported violations on September 21, 1970 (R. 42 , 43). See EPA v. Hyman-Michaels Co., # 71-24, decided today.

The first date charged is August 10, 1970, and there is no doubt there was a great deal of uncovered refuse at the site on that date (R. 39). But there is also no doubt that Mr. Ashbaugh has already been punished for this violation; he was prosecuted in court, pleaded guilty, and was ordered to pay a \$200 fine (R. 17; EPA Ex. 1). It is elementary that he cannot be punished twice for the same offense, even if the second penalty is a civil one, and the Agency, as a responsible public agency, ought not to have tried to do so.

But the evidence is clear, as charged, and it is not denied, that additional refuse was dumped at the already offensive site about September 14: "It had progressed from what was a

relatively circular area [of 1/2 acre, see R. 39] somewhat and had actually been dumped around the shelter and into the access lane or on site road" (R. 40). Pictures (EPA Ex. 5A, 5B) showed the deplorable conditions and the complete absence of attempts to cover or compact. A neighbor testified in gory detail about the odor, vermin, and unsightly conditions prevailing on his property as a result of open dumping at the site during this period (R. 51-59). For this second offense a penalty of \$1000 is warranted; Mr. Ashbaugh was let off rather easy the first time for an egregious violation, and the record shows he had been amply warned in the past as to his obligations (R. 23, 27, 29, 30, 33, 35).

There are numerous allegations as to violations on January 10-11, 1971, but the record is clear that Mr. Ashbaugh had terminated his interest in the premises before that time (R. 67, 94). It was, however, alleged and proved that he failed to apply the required final cover upon abandoning the site (Pule 5.07 (b)). This is shown by ample evidence that the piles of uncovered refuse remained until January 10 and beyond (EPA Exs. 9A-9F, R. 73-74), with no suggestion that they had been deposited there after Mr. Ashbaugh terminated his control on January 7. In February, it was estimated, the refuse stood four feet deep over an area of 250' X 300' (R. 74). We think ample notice of this charge was conveyed by the last sentence of paragraph 6 of the complaint, that the respondent "has failed to satisfactorily close his sanitary landfill site." An additional \$1000 will be assessed for this violation, which indicates a continuing inattention to fundamental obligations.

In determining the amount of the penalty we have considered a number of factors, including the seriousness of the infractions, the respondent's apparent ability to pay, and his past compliance record.

The only defense is that respondent's equipment broke down (R. 62, 85), but he made no adequate attempt to hire replacements (R. 88), and an August breakdown can never excuse a failure to cover all the way to January.

We refrain from ordering Mr. Ashbaugh to clean up the site, as that is being done by his successor, who plans to operate a lawful landfill (R. 44, 75-76).

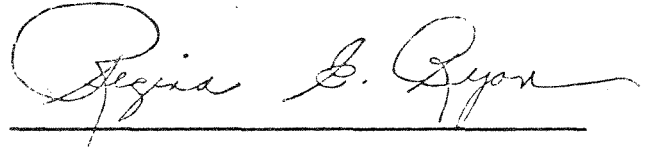
This opinion constitutes the Board's findings of fact and conclusion of law.

#### ORDER

- 1) Donald M. Ashbaugh shall not cause or allow the open dumping of refuse, at the site described in the record or elsewhere.
- 2) Donald M. Ashbaugh shall within 35 days after receipt of this order pay to the State of Illinois the sum of \$2000 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 22 day of July, 1971.

  
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