

testimony admitted the truth of the Agency's allegations. Though dumping occurs six days a week, he had spent only two to three hours every two weeks covering and compacting. (R. 22) He attributed the lack of cover in July to the unavailability of equipment. (R. 27) In October, he estimated that he spent only three days covering and compacting. (R. 87) Respondent's acknowledgement of his open dumping and of his failure to cover and compact daily as the Regulations demand is a ready indication of his commission of the violations alleged.

There is no question that Charlett violated the Rules and Regulations which deal with the operation of refuse disposal sites. He admits it. He does say, however, that he did not keep up, or purchase, adequate machinery to do the proper covering and compacting job on the site because he had been informed, second hand, by a "representative of a State Agency" (unidentified) that the State was prepared to close him down. This "representative" also told him that such legal action was imminent. In the opinion of the Board, illegal operation of a refuse site cannot be justified on the basis that it will be closed down in the near future. In fact, Charlett could have operated the site properly by maintaining the equipment he had on the premises. He didn't do that, and therefore he should be held accountable for his actions.

Charlett's disposal site was located near a small pond. Witnesses testified that refuse was seen floating on this pond. (R.33,43,71) Charlett even admitted that refuse from his disposal site was pushed into the pond. (R. 28) This method of disposal of wastes is in violation of Rule 5.12(c) which states:

"Rule 5.12. PROHIBITED ACTIVITIES. The following activities shall be prohibited in conjunction with or upon the site of the sanitary landfill.

. . . .

(c) Deposition of refuse in standing water."

Charlett admits that the refuse is dumped in the standing water on his site. He may have indicated that persons other than himself actually put the refuse in the water, but this is no defense. Since he is the operator of the disposal site, he must be the one held responsible for its illegal operation.

A more difficult question is presented as to whether in dumping refuse into the standing water Charlett was in violation of Section 12(d) of the Environmental Protection Act. We find that he was. The definition of the word, "waters", in the Act specifically covers "all accumulations of water, surface or underground." The fact that this water pond may dry up in the summer in some years would not in our opinion exclude this pond from the definition of "waters" in the Act.

Further, there is no question that the operation of a refuse site whereby refuse is disposed into the waters of the State creates a water pollution hazard as stated in Section 12(d) of the Act. This may also be a violation of 12(a) of the Act except for the fact that there was no expert testimony which connected the high COD (chemical oxygen demand) and chloride levels in the pond to the type of refuse being disposed in it by Charlett.

Agency personnel testified that during their visit to the site in July they witnessed a smoldering fire. (R. 33,44) Roger Miller, who aids Respondent in the operation of the site, recalled the fire of which they spoke. It had occurred on one of the municipal garbage trucks; the fiery load was placed separately from the remainder of the garbage so that the fire would not spread. (R. 93) Miller attempted to douse the fire with several buckets of water; when he left, the refuse pile was steaming, but did not appear to be a fire. (R. 94) Charlett has met his obligation to extinguish fires which occur on his disposal site. Therefore, we find no violation of the open burning prohibitions in the Environmental Protection Act, or the Rules and Regulations governing the operation of Refuse Disposal Sites.

In sum, the evidence has established that Charlett has permitted the open dumping of refuse, the improper operation of a refuse disposal site, and the disposal of refuse in standing water so as to create water pollution hazard and violate Rule 5.12(c) of the Rules and Regulations for Refuse Disposal Sites and Facilities. The individual who chooses to operate a sanitary landfill site bears a special responsibility toward the land he is using and toward the environment. Despite repeated warnings and visits from the various State agencies, Charlett persisted in remaining in flagrant violation of the applicable Rules and Regulations and of the Environmental Protection Act. A penalty in the amount of \$500.00 (a total of \$1500.00 shall be assessed for each violation committed.

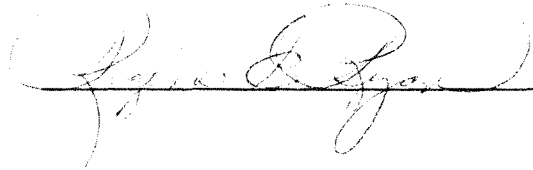
The following order thereby issues:

1. Charlett shall cease the open dumping of refuse.
2. Charlett shall operate the refuse disposal site in compliance with Rules 5.03, 5.05, 5.06 and 5.07 of the Rules and Regulations for Refuse Disposal Sites and Facilities. In accordance with said Rules, he shall cover and compact at the appropriate intervals and shall maintain the necessary operational equipment on the site.
3. Charlett shall cease the disposal of refuse in standing water.
4. Charlett shall remit to the Environmental Protection Agency the sum of \$1500.00 in penalty.

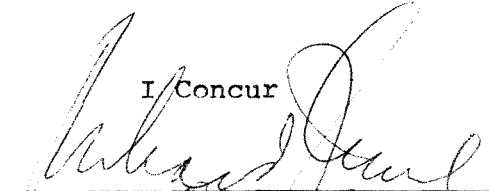
5. Should Charlett decide to cease operations on the site, he shall comply with Rule 5.07(b) as to final cover.

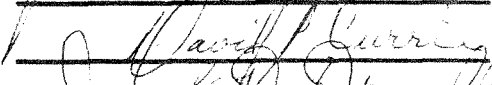
6. Charlett shall forthwith bring his site into compliance with all applicable State statutes, Rules and Regulations.


I, Regina E. Ryan, Clerk of the Pollution Control Board, certify that the Board adopted the above opinion and order this 17th day of February, 1971.

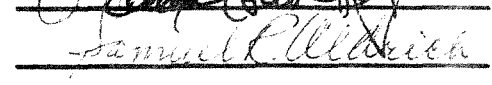



I Concur











I Dissent

