

ILLINOIS POLLUTION CONTROL BOARD

October 14, 1971

ENVIRONMENTAL PROTECTION AGENCY )		
	)	
v.	)	PCB 71-172
	)	
ARTHUR GERDES	)	

Larry R. Eaton, attorney for the Environmental Protection Agency  
 Richard Rasmussen, attorney for Arthur Gerdes

Opinion and Order of the Board (by Samuel R. Aldrich):

On June 30, 1971, the Environmental Protection Agency ("Agency") filed a complaint charging the respondent with numerous violations of the Rules and Regulations for Refuse Disposal Sites and Facilities ("Land Rules") and of the Environmental Protection Act ("Act"). Mr. Gerdes owns a landfill for solid waste disposal near Nauvoo, Illinois. The Agency subsequently amended its complaint so as to include three additional counts. We find several of the charges well proven and impose a money penalty.

The landfill in question is located on a farm owned by Mr. Gerdes and has been operated by him for about six years (R. 80, 81). The site was closed about July 15, 1971, at the direction of the Nauvoo city council (R. 108, 109). We here consider violations which the Agency alleges occurred up to and through August 11, 1971, the date the amended complaint was filed.

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

Count 2 of the complaint alleges operation of the landfill without posted hours of operation as required by Rule 4.03(a) of the Land Rules. Witnesses for the Agency testified that the only sign posted at the entrance was one indicating that the site served as a city dump (R. 23, 53, 70). Mr. Gerdes stated that the landfill site was open from 8:00 am to 4:30 pm on Saturdays and Sundays only (R. 82). He admitted that for the past two years the hours or days of operation had been posted in the local paper only, not at the site (R. 82, 83). A violation was clearly proved.

Count 3 alleges the absence of a shelter, in violation of Rule 4.03(c) of the Land Rules. The Rule requires that a shelter be furnished which is convenient for use by operating personnel. The record indicates that at one time a trailer was present at the site but that it was removed about three years ago (R. 23, 83, 84). Mr. Gerdes testified that he worked at the site for only about two hours at a time and used sanitary facilities in town (R. 85). We find a violation of Rule 4.03(c) was proved.

Count 4 charges respondent with permitting access to the site during hours when operating personnel were not present and with permitting unsupervised unloading of refuse, in violation of Rules 5.02 and 5.04 of the Land Rules. A witness for the Agency testified that on two occasions he observed persons depositing waste at the site when operating personnel were not present (R. 19, 20). The record indicates that on another occasion the gate at the entrance to the site was open despite the absence of operating personnel (R. 51). Respondent has violated both Rule 5.02 and Rule 5.04.

Count 5 alleges that no portable fences were provided or used to prevent material from blowing, in violation of Rule 5.04. Agency inspectors testified that on numerous occasions they observed no portable fences on the site (R. 24, 57, 71). However, Rule 5.04 requires only that portable fences be used "when necessary to prevent blowing litter from the unloading site." There is no indication that litter was blowing from the unloading site on the occasions cited. In the absence of evidence relating to the necessity of portable fences we find no violation has been proved.

Count 6 alleges insufficient operational equipment, in violation of Rule 5.05 of the Land Rules. The Rule requires that equipment "be available at the site at all times to permit operation of the landfill according to the approved plan." The record clearly indicates that sufficient equipment was not always present at the site (R. 23, 45). However, a crawler tractor was observed on several occasions by Agency inspectors (R. 51, 71). Elmer Kraus testified that Mr. Gerdes moves in earthmoving equipment from his construction business as needed (R. 100). The evidence thus indicates that sufficient equipment was available. To require this equipment to be at the site at all times, even when the landfill is closed, would be unreasonable. We find no violation of Rule 5.05.

Count 7 alleges insufficient spreading and compacting of refuse, in violation of Rule 5.06. The Rule requires that refuse be spread and compacted as rapidly as it is admitted to the site. That proper spreading and compaction has not always been provided is evident from the record. On two occasions persons were observed depositing refuse when operating personnel were not present (R. 19, 20). Agency inspectors testified that they observed uncompacted refuse during several visits to the site (R. 25, 73). The question of whether the deposition of

refuse occurred at times when the landfill site was closed is not relevant to the issue of compaction. The operator of a landfill must bear the responsibility for proper handling of refuse irrespective of when and how it is deposited. We have already found that Mr. Gerdes permitted access to the site during hours when operating personnel were not present. It was up to Mr. Gerdes to prevent such access and, if unauthorized dumping did occur, to provide proper spreading and compaction as soon as possible after the event. A violation was proved.

Count 8 charges Mr. Gerdes with failing to cover refuse at the end of the working day, in violation of Rule 5.07 (a). Violations were clearly shown. An Agency inspector testified that refuse remained uncovered for two consecutive days (R. 31). Mr. Gerdes admitted that not all refuse had been covered (R. 87).

Count 9 alleges failure to provide a final cover for refuse as required by Rule 5.07(b). The Rule states that at least two feet of material shall be placed over the surface of all completed portions of the fill within six months following the final placement of refuse. Mr. Gerdes stated that he had recently "cleaned up" the site but had not yet covered all of the fill face (R. 91, 93). It is true that at the time of the hearing only one month had passed since the site was closed. However, an Agency inspector testified that a portion of the landfill area had received no additional refuse for a period of almost a year, yet had been given only a shallow cover (R. 30, 31). We interpret this fact to mean that the area had received a final placement of refuse and that a final cover is thus required. We find respondent to be in violation of Rule 5.07(b).

One additional matter is worthy of comment. Much testimony was received concerning the lack of cooperation given respondent by those who used his landfill site. Several witnesses referred to the lack of adequate financial compensation. Even neighboring townships failed to pay for the privilege of using the landfill (R. 95). The mayor of Nauvoo testified that the City does not have sufficient funds to compensate Mr. Gerdes adequately (R. 113). Mr. Gerdes indicated he could not operate the landfill unless he were to receive greater remuneration (R. 94). Counsel for the Agency expressed the hope that people would some day realize the cost of living must include the cost of disposing of their waste products in a proper manner (R. 116). We could not agree more. We fully appreciate the service rendered to a community by landfills such as that of Mr. Gerdes. However, the rules require that refuse be disposed of properly. We cannot allow landfills to be operated outside the law, even if money is saved for the community in the process. We are encouraged by the fact that efforts are now underway to raise money for the support of the Gerdes landfill (R. 97). It is our fervent hope that these efforts will meet with success.

Counsel for the Agency requested that prior to reopening of the site, respondent be ordered to apply for a permit from the Agency as if the site were a new one (R. 116). He asserted that this would further ensure proper operation of the landfill. In our judgment, requiring Gerdes to obtain a permit is unnecessary, however. At the time of the hearing the landfill had been inoperative for only one month, and Gerdes indicated that he wished to reactivate the site (R. 94). Furthermore, there is no indication in the record that the siting of the landfill is such as to pose a threat of pollution. There is thus no need for the Agency to investigate siting through the normal channel of the permit procedure. We think that proper operation of the landfill can be ensured by ordering that any further operation be conducted in strict accordance with the rules. We will so order.

In summary, we find violations with respect to the posting of hours of operation, provision of a shelter, permitting uncontrolled access to the site, unsupervised unloading, spreading and compacting, daily cover, and final cover. For these violations we shall assess a penalty of \$200. The amount of the penalty is less than the amount we have imposed in other cases involving landfills (see EPA v. Bath, Inc. and John L. Walker, PCB 71-52, and EPA v. Oscar E. Denny, PCB 71-32). In the instant case the operation is relatively small in size. It is operated only two days per week and the violations are less flagrant.

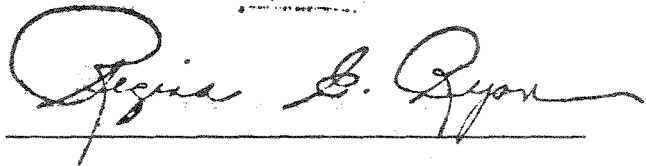
Mr. Currie and Mr. Kissel dissent in part for reasons stated in a separate opinion.

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

#### ORDER

1. Arthur Gerdes shall comply with Rule 5.07(b) of the Rules and Regulations for Refuse Disposal Sites and Facilities by providing final cover for refuse at his landfill site.
2. In the event the landfill owned by Arthur Gerdes is reopened, it shall be operated in strict accordance with the Rules and Regulations for Refuse Disposal Sites and Facilities and with the Environmental Protection Act.
3. Arthur Gerdes shall within 35 days after receipt of this order pay to the State of Illinois the sum, in penalty, of \$200.

I, Regina E. Ryan, Clerk of the Pollution Control Board, hereby certify that the Board adopted the above opinion and order this 14 day of October, 1971.



Regina E. Ryan