



occasions this gate was held open by logs or brush (R. 54, 57). Mr. Rhodes admitted that this did occur in the spring of 1971 (R. 307).

The record indicates that flooding occurs less frequently now that much of the land on the site has been filled (R. 297, 343). It seems likely that flooding problems will be minimized when the flood-gate is again in operation. We will therefore require that it be kept in good repair. In addition, respondent is advised to avoid operating his landfill close to the river so as not to create a water pollution hazard.

Mr. Rhodes is also alleged to have dumped refuse over a large, impractical area in violation of Rule 5.03 of the Land Rules. Certainly the record indicates that the face of the fill has at times covered quite a large area. Agency witnesses estimated the face to be as much as 600 feet long (R. 66). Adam Larimore, an inspector for the Agency, was of the opinion that 100 feet of open face is the maximum amount that one tractor operator can handle adequately (R.78). His judgment was challenged by counsel for the respondent (R. 81). We are well aware of the difficulty in arbitrarily distinguishing between "practical" and "impractical" in the sense referred to here. Nonetheless, the fact remains that respondent has failed to cover the refuse satisfactorily, as will be discussed later. We think that the large area over which refuse is dumped precludes the possibility of proper covering. We find that respondent is in violation of Rule 5.03.

Respondent is charged with violating Rule 5.07 of the Land Rules by failing to cover all exposed refuse at the end of each working day. Violations were clearly shown. Agency witnesses testified that on several occasions daily cover was not provided (R. 33, 34, 183, 240). Mr. Rhodes admitted that cover was not always provided because of insufficient cover material or bad weather (R. 287, 290).

The complaint further alleges improper salvage operations in violation of Rule 5.10(d) of the Land Rules. The Rule requires that salvaged materials either be removed from the site daily or be stored such that they will not create a nuisance, rat harborage, or unsightly appearance. Mr. Rhodes indicated that certain materials were at times salvaged (R. 302) and that articles may remain on the site for a week or longer (R. 304). Agency witnesses testified that such articles were not elevated above the ground and thus created a rodent harborage (R. 60, 61, 115, 147, 160). A rat was observed by an Agency inspector during a visit to the site (R. 63), and Mr. Rhodes admitted that he had seen rats on the premises (R. 303). As we noted in EPA v. J. C. Dill, PCB 71-42, the rules do not require that salvaged materials be elevated. Nevertheless, we agree with the contention of Agency witnesses that elevation is an effective deterrent to rodents and therefore a highly desirable operating procedure. The evidence establishes the fact that salvaged materials were neither removed nor stored so as to avoid rat harborage. We find that a violation was shown.

The final allegation concerns the deposition of refuse in standing water, contrary to Rule 5.12(c) of the Land Rules. There is evidence that refuse was observed in water flowing through the ravine mentioned

previously (R. 59, 178). However, the Rule requires proof that refuse was put into the water. In the absence of additional information concerning the flow characteristics of the water in the ravine we cannot know whether or not water was present at the time the refuse was deposited. The record is simply inconclusive in this regard. We find that no violation has been established.

One additional matter deserves comment. Counsel for both complainant and respondent suggested in their closing statements that the Board consider modifying its procedural rules so as to allow negotiated settlements or compromises between the litigants (R. 347, 349, 350). The hope was expressed that such compromises would considerably shorten proceedings of this type and reduce costs. We agree that a reduction in the time and expense of litigation is a desirable goal. Counsel for the respondent specifically suggested that the Board grant to the Attorney General some authority to negotiate such agreements (R. 350). This requires no action by the Board because the Attorney General already has such authority under Section 333 of the Procedural Rules of the Board which states:

All parties to any case in which a settlement or compromise is proposed shall file with the Board a written statement, signed by the parties, or their authorized representatives, outlining the nature of, the reasons for and the purposes to be accomplished by the settlement.

It was further suggested that the hearing officer be granted additional powers and authority. The Environmental Protection Act, Section 33, explicitly charges the Pollution Control Board with responsibility for examining the record and rendering decisions. There is no provision for delegating additional responsibility to the hearing officer.

To summarize, we find violations with respect to inadequate protection against flooding, dumping over a large, impractical area, failure to provide daily cover, and improper salvaging. We shall order that no further infractions occur and assess a penalty for past violations of \$1500.

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

#### ORDER

1. Charles R. Rhodes shall cease and desist from violations of the Rules and Regulations for Refuse Disposal Sites and Facilities as follows:
  - a) The floodgate near the landfill site shall be kept in good repair and in an operational condition at all times.
  - b) Dumping of refuse shall be confined to the smallest practical area.
  - c) Refuse shall be covered daily as required by the Rules.

d) Salvaging shall be carried out in a sanitary manner, salvaged materials being removed from the site daily or properly stored as required by the Rules.

2. Charles R. Rhodes shall within 35 days after receipt of this order pay to the State of Illinois the sum, in penalty, of \$1500.

I concur

I dissent

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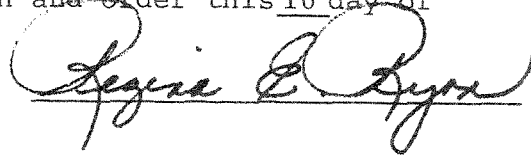
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I, Regina E. Ryan, Clerk of the Pollution Control Board, certify that the Board adopted the above Opinion and order this 16 day of September, 1971.

  
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