

ILLINOIS POLLUTION CONTROL BOARD
August 30, 1971

ENVIRONMENTAL PROTECTION AGENCY)
)
 v.) PCB #71-32
)
 OSCAR E. DENNY, d/b/a/)
 D. & S. LANDFILL)

Robert F. Kaucher for Environmental Protection Agency
Ted Harvey for Oscar E. Denny

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

On February 25, 1971, the Environmental Protection Agency ("Agency") filed a complaint against Oscar E. Denny ("Denny"). Respondent operates a landfill for solid waste disposal near Belleville, Illinois. The complaint alleges numerous violations of the Environmental Protection Act ("Act") and of the Rules and Regulations for Refuse Disposal Sites and Facilities ("Land Rules"). At a prehearing conference held April 21, 1971, the wording of the complaint was amended to indicate that the alleged violations occurred before, on and since August 11, 1970.

As in similar cases involving landfills (EPA v. Sauget, #71-29, and EPA v. Clay Products Co., #71-41) the evidence establishes certain charges and fails to establish others. We order that violations cease and a money penalty be paid.

The complaint first alleges open dumping in violation of Section 21 (a) of the Act and of Rule 3.04 of the Land Rules. As in the Clay Products case we note that open dumping is a general term embracing a number of more specific infractions with which the respondent is also charged. In view of our findings on the more specific infractions it is unnecessary for us to decide whether open dumping has also occurred.

Respondent is alleged to have had open burning at his landfill site. A witness for the Agency testified that he observed a large pile of brush being burned on August 11, 1970 (R. 92,153). A photograph taken on August 12, 1970, and introduced by the Agency (EPA Ex. 4) shows material that has been burned. Oscar Denny admitted that tree limbs had been burned in August but stated that no such burning had occurred for over six months (R. 238,239). A witness for Denny indicated that burning refuse is occasionally brought to the site but that it is dumped in a separate area and extinguished with dirt (R. 283). Nevertheless, the evidence indicates that material was burned on August 11, 1970, and we find that Denny has caused or allowed open burning.

Denny is alleged to have violated Rule 4.02 of the Land Rules and Section 12(a) and (d) of the Act by operating his landfill so as not to prevent leachate from contaminating the ground waters or streams in the area. There is ample evidence that leachate was coming to the surface and running off into water impounded on the site (R. 87,103,114). However, Rule 4.02 does not apply to contamination of water by leachate at an existing landfill site. This rule relates only to siting, not to operation of a landfill.

The question remains as to whether a violation of Section 12 of the Act has occurred. The first issue for the Board to decide is whether the water impounded on the Denny site constitutes "waters of the State" under the Act and is to be protected from pollution. The record is simply inadequate. In future cases we will expect the Agency to describe the receiving waters such that we can make a determination.

A second issue is the extent to which the leachate would be expected to alter the properties of the receiving water so as to interfere with "legitimate uses" under Section 3(n) of the Act. In order to decide this issue we must be provided with a description of the amount of leachate relative to the volume of receiving water and of the nature of the leachate. In the present case there is no evidence that the leachate created or was likely to create a nuisance or render the impounded water unfit for any legitimate use. We do not feel that the simple fact of water coming to the ground surface at a landfill site is prima-facie evidence of water pollution under Section 12. Such water may make little or no contact with refuse or may contact only inert materials. There is insufficient proof that the Denny operation was creating a water pollution hazard pursuant to Section 12.

We note further the statement of an Agency witness that leachate tends to come to the ground surface when refuse is not properly compacted and covered (R.87). In that event the leaching problem will likely be corrected in the Denny case once proper compaction and covering is provided.

The Agency alleges that Denny permitted access to the site "during all hours of the day", in violation of Rule 5.02 of the Land Rules. However, as we noted in the Clay Products case, that rule does not limit the hours of operation but rather prohibits access when no employee is present. We find the allegation to be deficient.

Rule 5.03 requires the dumping of refuse on the site to be confined to the smallest practical area. The evidence on this point is inadequate. The record contains estimates of the size of the entire landfill area but no clear indication of the area being actively used. An inspector for the Agency testified that in his opinion the fill face was too large for the refuse to be compacted immediately with the equipment on hand (R. 94,95). Nevertheless, in the absence of more objective evidence we find no violation has been proved.

Respondent is alleged to have permitted unsupervised unloading, and to have provided no portable fences nor policing of the area. An Agency witness testified that on November 19, 1970, no operational personnel were present at the site despite the fact that trucks were dumping refuse at the time (R. 97,98). Furthermore, the same witness testified that no portable fencing was provided (R. 98). Rule 5.04 requires the use of portable fences "when necessary to prevent blowing litter from the unloading site". Oscar Denny denied that blowing litter was a problem but admitted that litter could be blown into the impounded water (R. 242). The regulation specifically requires fencing to avoid material blowing from the unloading site. There is evidence that litter was blowing from the unloading site during one visit by an Agency inspector and that no effort was being made to collect scattered material (R. 98,99). We find Respondent to be in violation of Rule 5.04.

The Agency further alleges that Denny has failed to spread and compact refuse as required by Rule 5.06. The record indicates that on November 19, 1970, refuse was dumped without being spread or compacted (R. 98). Indeed, no one was even operating equipment at the site. The rule requires refuse to be spread and compacted as rapidly as it is admitted to the site. A violation of the rule was therefore shown.

Respondent is charged with operating his refuse disposal site without covering the refuse at the end of the working day, contrary to Rule 5.07(a). There is ample proof of such violations. The Agency introduced photographs showing that certain recognizable objects remained uncovered for two consecutive days (EPA Ex. 2, 3, 7, 8). In fact, the record indicates that some refuse present in August of 1970, was still uncovered on February 2, 1971 (R. 168). We note, however, that the amount of refuse left uncovered has decreased somewhat in recent months. A witness for the Agency testified that by March 26, 1971, much old refuse had been covered adequately (R. 172). By April 19, almost all refuse had been covered (R. 192).

Denny is also alleged to have permitted improper salvage operations and scavenging, in violation of Rules 5.10 and 5.12(a). As we noted in the Clay Products case, the difference between salvaging and scavenging is not altogether clear. There is evidence of manual sorting of refuse (scavenging) by truck drivers (R. 100). Oscar Denny testified that salvage operations were carried out at the site, salvaged materials being placed in a pile (R. 237). However, photographs introduced by the Agency show several junked automobiles and other items presumably meant for salvage lying scattered among other refuse (EPA Ex. 9). There was testimony that the automobiles were not being compacted or covered, nor were they being removed from the site (R. 113). Such operations are clearly improper. Not only do they interfere with the fill operation; they also create a potential rat harborage and give the landfill an unsightly appearance.

The Agency's final allegation is that Denny allowed refuse to be deposited in water contrary to Rule 5.12(c). There is considerable evidence that refuse was seen in water (R. 64,66,104,184). However, the rule requires proof that refuse was put into the water. A witness for the Agency did testify that refuse was being discharged into standing water on two occasions (R. 100,103). The record indicates that on or prior to one of these occasions (November 19) some rainfall occurred in the area (Denny Ex. 2). Although we recognize that rainfall may create additional problems for a landfill operator, it does not automatically justify violations of the rules. The regulation does not provide for any exceptions in this regard. Rule 4.03(b) suggests but does not require that separate operational areas be operated within the site to allow for wet or dry weather operation and access. Respondent apparently has no plans for a suitable alternate disposal site during wet weather. Relative to the second date, November 30, a date preceded by minimal rainfall (Denny Ex. 2), the record is clear that refuse was discharged into water (R. 103). We find, therefore, that a violation has been established.

There is considerable testimony concerning the presence of a septic liquid at the site. Oscar Denny admitted that septic tank pumpings had been deposited at the landfill (R. 236). He testified that as of July 1, 1970, he had refused to accept such wastes after being informed he was violating the law. Rule 5.08 clearly prohibits the discharge of septic tank pumpings without written approval of the Department of Public Health. However, the complaint does not allege violations of Rule 5.08, failing even to mention the deposition of liquids or hazardous materials. The complaint is clearly deficient. Nevertheless, as we noted in the Sauguet case, the disposal of septic tank wastes is a most unsanitary practice and future violations will not be tolerated.

In summary, we find violations with regard to open burning, unsupervised unloading, fencing, policing of the area, spreading, compacting, and covering, scavenging, improper salvaging, and deposition of refuse in standing water. We note that conditions at the site have improved considerably in recent months, although evidently only after the complaint was filed. Letters to Denny from the Agency enumerating deficiencies apparently evoked little or no action (R. 127,156). Recent photographs submitted by the respondent indicate improved operating methods (Denny Ex. 3-10). Agency witnesses testified that improvements had been made (R. 167,172,174,189). We shall order Denny to cease and desist any further infractions. As in the Sauguet case we shall assess a penalty of \$1000 to deter future violations.

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

ORDER

1. Oscar E. Denny shall cease and desist from violations of the Rules and Regulations for Refuse Disposal Sites and Facilities and of the Environmental Protection Act as follows:
 - (a) Open burning shall not be permitted.
 - (b) No unloading shall be permitted without supervision.
 - (c) Portable fences shall be required when necessary to prevent the scattering of litter, and scattered litter shall be collected.
 - (d) Refuse shall be spread and compacted as rapidly as it is admitted to the site.
 - (e) Refuse shall be covered daily as required by the Rules.
 - (f) Scavenging shall not be permitted.
 - (g) Salvaging must be carried out in a sanitary manner, salvaged materials being removed from the site daily or properly stored as required by the Rules.
 - (h) The deposition of refuse in standing water shall not be permitted.

2. Oscar E. Denny shall within 35 days of the filing of this order remit to the Environmental Protection Agency the sum, in penalty, of \$1000.

I concur	I dissent
<u>David L. Curran</u>	_____
<u>Samuel R. Aldrich</u>	_____
<u>Joseph D. Sumelle</u>	_____
<u>Richard King (reports opinion)</u>	_____
<u>Barbara King</u>	_____

I, Regina E. Ryan, Clerk of the Pollution Control Board, hereby certify that the Board adopted the above opinion and order this 30th day of August, 1971.

Regina E. Ryan