

ILLINOIS POLLUTION CONTROL BOARD
October 28, 1971

ENVIRONMENTAL PROTECTION AGENCY)	
)	
v.)	PCB 71-226
)	
TOWNS WRECKING COMPANY)	

Mr. and Mrs. Mix Towns, appeared pro se

Mr. William J. Scott, Attorney General, and Mr. Deneen A. Watson, Special Assistant Attorney General, appeared on behalf of the Environmental Protection Agency

Opinion of the Board (by Mr. Kissel):

On August 5, 1971, the Environmental Protection Agency (the "Agency") filed a complaint with the Board against the Towns Wrecking Company ("Towns") which is a business owned by Mix and Myrtle Towns in and about the area of Marion, Illinois. The complaint alleged that Towns was guilty of causing "air pollution" because Towns burned autos in the open for purposes of salvaging them. The complaint also alleged a violation of the Regulations, namely Rule 2-1.1 of the Rules and Regulations Governing the Control of Air Pollution.

A hearing was held in Carbondale, Illinois on October 4, 1971, before George Bullwinkel, Hearing Officer.

The Agency witness, Paul Schmierzbach, testified that he visited a site near Marion on April 19, 1971, and took a number of photographs which depicted the open burning of automobiles at that site. Exhibit 1, which is a photograph of the site, shows Mr. Towns operating a hydraulic crane at or near the open burning. He further testified that he asked Mr. Towns to stop open burning salvage operations.

On April 22, 1971, Mr. Schmierzbach was driving near another site and saw a cloud of black smoke. He investigated and found 15 to 20 automobiles being burned in the open. Pictures were taken of the burning. See Exhibits 4, 5 and 6. On the latter date Mr. Towns was not at the site, but Mrs. Towns was.

Mr. Towns denied causing the open burning on the site. He said that the site at which the automobiles were being burned was not owned by him and he does not know who does. He said he hasn't burned autos for at least a year, but he did pick up the autos


after they had been burned. His obligation is to clear the burned autos from the site and deliver them to the manufacturers who can use the scrap steel. Mrs. Towns, who also testified, also denied having anything to do with the open burning. In fact, while she admitted being on the site on April 22, she really did not know whether autos were being burned.

There is no question that someone was burning autos in the open in violation of Rule 2-1.1 and in violation of Sections 9(a) and 9(c) of the Environmental Protection Act. The more serious question is whether the respondent, Towns Wrecking Company and its employees, were the ones who were burning the autos in the open. Mr. Towns emphatically denied that he had anything to do with open burning. His testimony is that he receives title to the autos only after they have been burned. The Agency made the case against Towns based on the fact that Towns and his wife were present on April 19 and 22, 1971, when the burning was observed at the site. The Agency did not actually prove that Towns owned the site. It would seem that this case would not be governed by the doctrine in the Neal Auto Salvage case, EPA v. Neal Auto Salvage, PCB 70-5, dated October 23, 1970. In that case the Board held that where open burning on someones premises occurs, the Agency must only prove that fact. The burden then shifts to the property owner to rebut the allegation. The uncontradicted evidence in this case is that Mr. Towns and his wife do not own the property at which the burning occurred. We therefore feel that the Agency has not met the burden of proof necessary to establish a violation of the statute by Towns. Mere presence on the site where open burning occurs is not enough to prove a violation of the statute and/or the regulations.

We note that Mr. Towns does condone open burning, even though he is not the one who sets the fire. In his future dealings he should find alternate sources for autos and buy them from dealers who are not burning in the open. Shredding is available near the St. Louis area, which is where Mr. Towns takes the burned autos anyway. We hope that Mr. Towns takes the suggestion of this Board to find alternate means to conduct his salvage business.

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

I, Regina E. Ryan, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion was entered on this 28 day of October, 1971.



Regina E. Ryan, Clerk