

ILLINOIS POLLUTION CONTROL BOARD
May 8, 1975

ENVIRONMENTAL PROTECTION AGENCY,)
)
 Complainant,)
)
 v.) PCB 74-401
)
)
 PAUL HINDMAN,)
)
 Respondent.)

Mr. Howard Thomas, Assistant Attorney General, appeared for the Complainant;
Mr. Paul Hindman, Pro Se.

OPINION AND ORDER OF THE BOARD (by Mr. Dumelle):

This enforcement action was filed on October 29, 1974. The respondent is charged with operating a solid waste management site without a permit from the Environmental Protection Agency, in violation of Rule 202(b)(1) of Pollution Control Board Regulations, Chapter 7 (Solid Waste) and Section 21(e) of the Environmental Protection Act (Act). A second count charges respondent with causing or allowing the open burning of refuse in violation of Rule 311 of the Solid Waste Regulations and Section 9(c) of the Act. A public hearing was held January 10, 1975 wherein the respondent appeared pro se.

Paul Hindman leases an eighty acre tract of strip-mined land in Williamson County for the disposal of industrial waste consisting of cardboard, wood and floor sweepings. At the hearing Mr. Calvin Badding, a regional supervisor with the Agency, testified that he had visited the disposal site in question numerous times over the course of two to three years. On July 29, 1974 he noticed a compactor type refuse hauling truck dumping refuse at the site. Photographs depicting this were entered as Complainant's Exhibits A and B. Mr. Hindman admitted this was his truck (R. 14).

At a subsequent visit on August 21, 1974 Mr. Badding noticed refuse on the face of the landfill on fire. Photographs depicting such were entered as Complainant's Exhibits C, D, and E. He testified that after taking the photographs he proceeded into the City of Herrin; stopped by Hindman's

recycling center and informed him of the fire. He claimed that Hindman said he would immediately extinguish the fire. Upon returning to the site Badding found Hindman present at the site attempting to divide the blaze from other refuse (R. 17).

Finally, Badding testified that a search of Agency records indicated that Hindman had submitted a permit application but it had been denied (R. 22). The application, attached to the Complaint, reveals receipt by the Agency on April 29, 1974 and denied on June 3, 1974.

Mr. Hindman admits having operated the site without a permit. He claims, however, that he first applied for the permit in November, 1973, which application was never answered. The application received in April was dated November 5, 1973, but no proof that it actually was sent at that time was offered. Hindman admits to having received several letters after November, 1973, warning him of his failure to have a permit, but attributes his delay in reapplying to the fact that the deadline for having a permit was not until late July, 1974 (R. 39). With respect to the present status of the permit, Hindman testified that he engaged a private engineering firm in September, 1974 to help him with the application (R. 5). By the date of the hearing the firm had not yet submitted the application, nor had it given a firm date by which the application would be completed (R. 43-44). Hindman also testified that he had great difficulty securing any firm willing to do his application (R. 45).

With respect to the open burning charge, Hindman denied having started the fire. He cited motorcycle riders, whom he found at the site when he arrived, as a possible cause. He claimed he didn't know if they had set the fire but that it had been done before (R. 29-30).

On the basis of the record reviewed above we find sufficient evidence to warrant a finding that the respondent violated both the Act and Regulations as alleged in the Complaint. With respect to the open burning violation we note that Rule 311 provides that no person shall cause or allow open burning at a sanitary landfill site (emphasis added).

We have consistently held in the past that the statute and regulations are not limited to deliberate violations. EPA v. J.M. Cooling, PCB 70-2, 1 PCB 85 (1970), EPA v. Clay Products Co. et al, PCB 71-41, 2 PCB 33(1971), EPA v. Harshany, Incorporated, et al, PCB 72-151, 6 PCB 89 (1972). In Cooling we stated:

Because of his negligence in the operation of the dump site, the Respondent caused, allowed and permitted the open burning of refuse in violation of the relevant statutory and regulatory provisions....The law does not require that in order to be found guilty of the open burning provisions, the Respondent must actually be seen igniting the materials burned. Negligence, indifference and slipshod operation of a facility having a high potential of combustion falls within the purview of the statute and regulations (1 PCB 85, 94).

In Harshany we noted that the operation involved was not enclosed by a fence adequate to discourage trespassers. Similarly, in the instant case the record does not indicate, nor do the photographs reveal, that the dump was enclosed by a fence to deter trespassers. Considering Hindman's statement that "it has been done before" (R. 30), he was on notice as to the possibility of trespassers and open burning on a landfill which accepted materials having a high potential for combustion.

In both Harshany and Cooling we assessed a penalty of \$1,000. In EPA v. Jesse W. Farley, Sr., PCB 72-267, 6 PCB 101 (1972), however, we considered the respondent's apparent lack of intention and the relatively small size of his operation, and assessed a smaller penalty of \$250. Here in consideration of these factors, and respondent's expeditious efforts to extinguish the blaze, we feel that similar low penalty of \$250 is warranted for this offense.

With respect to the respondent's failure to have an operating permit the controversy as to when an application was originally filed is irrelevant. Rule 202(b)(1) requires that such permit be obtained by July 27, 1974 -- one year after the effective date of the regulation. This requirement established an affirmative obligation to secure a permit. Even if it is true that the respondent first applied in November, 1973, as he alleges, it was nevertheless his responsibility to at least inquire as to the status of his application. Instead, the record shows that he ignored several warning letters until he refiled in April, 1974. Moreover, almost two months remained within which to correct and refile that application, after it was denied on June 3, 1974, before the deadline arrived. Mr. Hindman did not even hire the engineering firm until September, 1974, and as of the date of the hearing, over five months after a permit was required, a new application had still not been completed. For this violation we assess a penalty of \$500. After

considering the testimony in this case and all the factors set out in Section 33(c) of the Act, we find that a penalty of \$500 is justified for these violations. A total penalty of \$750 shall therefore be levied.

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

ORDER

It is the order of the Pollution Control Board that respondent, Paul Hindman:


1. Cease and desist from further violations of the Act and Solid Waste Regulations except in accordance with paragraph 2 of this Order;

2. Discontinue all refuse disposal activities at the subject site unless an appropriate operating permit has been applied for within 30 days, and obtained within 120 days of the date of this order:

3. Pay a penalty of \$750 within 35 days, for the violations of Section 9(c) and 21(e) of the Act and Rules 311 and 202(b)(1) of the Solid Waste Regulations found herein. Penalty payment by certified check or money order payable to the State of Illinois shall be made to: Fiscal Services Division, Illinois Environmental Protection Agency, 2200 Churchill Road, Springfield, Illinois 62706.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 8th day of May, 1975 by a vote of

5-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board