

operation was observed by employees of the Environmental Protection Agency on April 22, 1971 (R.16,28), May 10, 1971 (R.50), June 8, 1971(R.14), June 24, 1971 (R.10), and June 25, 1971 (R.5). While Respondent has filed a general denial, the answer states that his discontinuation of "further burning of certain wood refuse" has been only since July, 1961. Respondent, in his testimony, concedes the open burning of the character alleged.

Respondent's defense consisted principally of testimony of persons in the area, both residents and employees of nearby companies, who acknowledged the open burning but expressed no discomfort resulting from it or desire to see it abated. Respondent also contends that suitable alternatives to open burning are not available, that chippers and other devices are too expensive, and that landfill is impracticable and costly.

Variance was granted to Respondent by the Air Pollution Control Board on July 14, 1967, which expired December 31, 1967. This variance appears to have been based on the representation that small amounts of scrap wood would be disposed of and that open burning would be eliminated thereafter. No steps were taken subsequent to the expiration of the variance for its renewal, and open burning has continued down to the present date.

We are not unmindful that Respondent's operation takes place in an area where industrial emissions are undoubtedly far worse than those coming from Respondent's site. Likewise, we recognize that the type of emissions resulting from Respondent's open burning do not appear to be causing any substantial burden on the neighborhood, nor seriously interfere with the well-being of residents living nearby. It may well be that there are other polluters in the immediate area that would better justify the time and efforts of the Agency and the Board. However, there is no question that Respondent has violated the statute as alleged, and that if we are to forbid open burning within the state, it must apply to all who violate the law. See Opinion and Regulations, #R70-11, Open Burning Regulations dated September 2, 1971. See Environmental Protection Agency v. Frank Cobin, d/b/a Cobin Salvage Co., #PCB71-234, dated November 11, 1971. The relatively mild penalty is assessed in consideration of the minimum burdens imposed on the neighborhood as a consequence of Respondent's violation.

This order constitutes the findings of fact and conclusions of law of the Board.

IT IS THE ORDER of the Pollution Control Board that Respondent, Carl Eugene Miller, doing business as Miller Lumber Company, cease and desist the open burning of wood refuse and by-products at his Peoria County site. Penalty in the amount of \$500.00 is assessed against Respondent, for violations occurring on April 22, May 10, June 8, June 24, and June 25, 1971, as charged.

I, Christan Moffett, Acting Clerk of the Illinois Pollution Control Board, certify that the above Opinion was adopted on the 23 day of November, 1971.

Christan Moffett