

dumping area", open dumping has taken place which probably has not been done by Respondent's employees, but rather by private citizens. However, this area is unfenced, not patrolled and easily accessible. The record does not disclose any substantial efforts having been made to abate the continued illegal dumping and the respondent appears to have acquiesced in its continuance.

Agency witnesses testified to the conditions of open dumping in both areas, the absence of spreading, compacting and cover, and the presence of oil and water on the land on the dates alleged. Some flies were observed in the oil spill area and cans and old refrigerators were observed in the "promiscuous dumping area". Oil odors were noted but beyond this no serious odor problem appears to have developed.

Section 21(e) of the present Act prohibits the conduct of refuse disposal operations except for "refuse generated by the operator's own activities" without a permit. The present Rules and Regulations for Refuse Disposal Sites and Facilities were adopted in April of 1966. Rule 1.01 requires the registration of all refuse disposal sites with the Illinois Department of Public Health. Rule 1.03 provides as follows:

"(a)fter the effective dates of the rules, prior approval shall be obtained from the Department for any new refuse disposal site or facility. Said approval will be granted when the registrant shall have met the rules set forth herein."

Respondent's defense is premised essentially on the alleged inapplicability of the statutory provisions and rules to its operation. It contends that since the refuse was generated by Respondent's activities no permit is required and that since its operation pre-dated the 1966 regulations, the regulations are not applicable to Respondent's landfill operation. If the refuse on Respondent's site was solely attributable to its business activities, its position with respect to the statutory requirement for permit might be well taken. However, there is no question that substantial refuse has accumulated on Respondent's site with Respondent's acquiescence that is not attributable to its business operation and for which Respondent, by its inaction and indifference is responsible. See Environmental Protection Agency v. Otto E. Dobbeke, Jr., et al, #72-130. Furthermore, while Section 1.03 requires new sites to acquire prior approval, nothing in the regulations suggests that sites existing prior to April, 1966 are exempt from the application of the Rules. This is all the more clearly brought out by reference to Rule 1.01 which requires registration of all refuse sites with the Department of Public Health.

We find Respondent to have violated the following Act and Rule provisions: Section 21(e) of the Act in failing to obtain a permit, Section 12(d) of the Act in creating a water pollution hazard,

Rule 3.04 in causing and allowing open dumping, Rule 4.03(a) with respect to fencing and posting, Section 5.03 in failing to confine its dumping of refuse to the smallest practical area, Rule 5.07(a) in not providing daily cover and Rule 5.12(c) in depositing refuse in standing water.

While the number of violations is great, there is no evidence that the impact on the community is severe and Respondent appears to be taking steps currently to improve the condition. Nor does there appear to be any evidence in the record that fires have resulted from the oil seepage.

We order Respondent to cease and desist its operation in violation of the Environmental Protection Act and the Rules and Regulations for Refuse Disposal Sites and Facilities. We direct Respondent to spread, compact and cover all refuse presently on its site in keeping with the Rules and to take affirmative steps to prevent others from using the site in violation of the Rules and Statute. Penalty in the amount of \$250.00 is assessed for the violations aforesaid.

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

IT IS THE ORDER of the Pollution Control Board:

1. Penalty in the amount of \$250.00 is assessed against Chicago, Rock Island and Pacific Railroad for violation of Section 21(e) and 12(d) of the Environmental Protection Act and Rules 3.04, 5.03(a), 5.07(a) and 5.12(c) on the dates alleged in the complaint, as amended. Within thirty-five days from the date hereof, 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 Drive, Springfield, Illinois 62706.
2. Respondent, Chicago, Rock Island and Pacific Railroad is directed to cease and desist violation of the Environmental Protection Act and the Rules and Regulations for Refuse Disposal Sites and Facilities with respect to its Silvis operation.

3. Respondent shall take affirmative steps to spread, compact and cover all debris and refuse presently located on its landfill site in Silvis, Illinois, in strict compliance with the relevant section of the Rules and Regulations for Refuse Disposal Sites and Facilities.
4. Respondent shall take affirmative steps to prevent the unlawful dumping by others of refuse and debris upon its landfill site.

I, Christan Moffett, Clerk of the Illinois Pollution Control Board, certify that the above Opinion and Order was adopted on the 12th day of September, 1972, by a vote of 4 to 0.

Christan M. Moffett