

ILLINOIS POLLUTION CONTROL BOARD
January 20, 1972

ENVIRONMENTAL PROTECTION AGENCY)
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 v.) PCB 71-307
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 C.M. FORD)
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Mr. John Parkhurst, Special Assistant Attorney General for the Environmental Protection Agency

Mr. C.M. Ford, appeared pro se

OPINION OF THE BOARD (by Mr. Dumelle)

This enforcement action was filed on October 5, 1971 by the Environmental Protection Agency (EPA). The complaint asserted that Mr. C.M. Ford owned and operated a refuse disposal site near Kankakee in Kankakee County and that several violations of the Environmental Protection Act and the landfill Rules (Rules and Regulations for Refuse Disposal Sites and Facilities, hereafter "Rules") were connected with its operation. Specifically the complaint, after amendment, alleged that Ford had caused, or allowed, open dumping of refuse on his site on or about August 5 and August 6, 1971 contrary to the Environmental Protection Act and Rules. Further the complaint averred that Ford had violated several housekeeping provisions of the Rules inasmuch as the site was not adequately fenced, did not have an entrance gate which could be locked, and did not have posted the opening and closing hours of operation. Further violations were alleged of provisions which state that "Dumping of refuse...shall be confined to the smallest practical area"; that a shelter be provided on the site; that earth moving equipment be on the site; that spreading and compacting of refuse be accomplished; and that a daily earth cover be placed over the deposited refuse. The EPA asked that a cease and desist order be entered and that Mr. Ford be fined for each violation. A hearing was held in Kankakee on November 29, 1971 in which Mr. Ford appeared unrepresented by counsel. He asked for a public defender and was properly advised that such was not available in a non-criminal, administrative hearing. Both the hearing officer and counsel for the EPA were courteous to Mr. Ford and cognizant and protective of his rights. Mr. Ford, when called as a witness, was both uncooperative and recalcitrant.

We find Respondent Ford to have caused open dumping of refuse, to have failed to confine the dumping to the smallest practical area, to have failed to spread and compact the refuse, to have failed to provide a daily cover, to have failed to provide a shelter on the site, to have failed to provide the requisite equipment on the site, to have failed to provide adequate fencing of the site, and to have allowed the open dumping by other persons on his site. All of the foregoing constitute violations of the Act or Rules.

Mr. Rene Van Someren, an inspector of solid waste disposal sites and a Sanitarian for the EPA, visited the site on August 5 and 6, 1971 (R.65-66). On the morning of August 5 Mr. Van Someren was on the site in the company of a state trooper. The precaution of being accompanied by a peace officer was necessitated by the fact that Mr. Ford had threatened Mr. Van Someren at their first and only previous meeting. Mr. Van Someren stated that the site was deserted at that time and that he observed demolition material, bricks, and wood in various places on the site (R.70-71). In the northeast portion of the site, about a hundred yards from the demolition materials, an impenetrable accumulation of trees and other landscape waste approximately eight feet high and 25-30 feet long was observed (R.72). There was other uncovered refuse elsewhere on the site (R.73).

Mr. Van Someren took photographs on both August 5 and 6. The photographs vividly show the principal violations found above. Great quantities of uncovered refuse are evident on the photographs (R.74-78, Comp. Ex. 2-8).

Mr. John McLane, another EPA employee who is an Environmental Protection Engineer, visited the site on the day before the hearing in this case and observed debris piled on the site without covering (R.81-88). He also testified that he observed a fire in progress and took two photographs which showed the fire (Comp. Ex. 9, 10). The open burning is clearly illegal but we cannot, in accordance with due process of law, find this fire to be a violation of the Act or Rules as there was no notice to the Respondent of the occurrence. Mr. McLane's testimony and photographs are useful, however, as being corroborative of part of Mr. Van Someren's testimony.

It is clear that in the area of dealing with management of solid waste disposal sites we must have uniform rules and uniform enforcement of the rules; we cannot allow Mr. Ford to openly dump refuse in defiance of the rules as a matter of course and not allow other persons to do the same. As we have pointed out before, the reason for the existence of rules relating to landfills and refuse disposal sites is to keep them sanitary. If improperly handled, refuse can become a public health hazard by providing food and refuge for rodents and insects and possibly contaminating ground water among other things. See EPA v. Clay Products Company et al, PCB 71-41, dissenting opinion, July 2, 1971.

Mr. Ford indicated that he has ceased to use the site for dumping. The rules impose a duty to cover or remove all remaining refuse on the site [Rule 5.07 (b)]. As part of our order we will require that Mr. Ford expeditiously proceed with the final clean up of the site.

Mr. Ford will be required to cease dumping on the site, to cover or remove the refuse presently on the site within 30 days, and to pay a penalty of \$1000. for the numerous, repeated and deliberate violations found in this case.


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

ORDER

Having considered the complaint, transcript and exhibits in this case it is hereby ordered:

1. That Mr. C.M. Ford cease and desist from causing or allowing the deposit of refuse on his site near Kankakee.
2. That Mr. C.M. Ford either remove from the premises or cover, in accord with the Rules and Regulations for Refuse Disposal Sites and Facilities, all refuse presently on the site, within 30 days from date.
3. That Mr. C.M. Ford pay to the State of Illinois, by February 15, 1972, the sum of One Thousand Dollars (\$1000.) as a penalty for the violations found in this case. Penalty payment by certified check or money order payable to the State of Illinois shall be made to the Fiscal Services Division, Illinois, Environmental Protection Agency, 2200 Churchill Drive, Springfield, Illinois 62706.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the Board adopted the above Opinion and Order on the 7th day of January, 1972 by a vote of 4-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board