

ILLINOIS POLLUTION CONTROL BOARD
October 17, 1972

ENVIRONMENTAL PROTECTION AGENCY,)
)
 Complainant,)
)
 vs.) PCB 72-146
)
 R. W. DUNTEMAN CO.,)
 an Illinois corporation,)
)
 Respondent.)

Larry Eaton, Assistant Attorney General for the EPA
George E. Bullwinkel for Respondent

OPINION AND ORDER OF THE BOARD (by Mr. Henss)

The Environmental Protection Agency filed its complaint alleging that Respondent, a highway contractor, had caused or allowed open burning of uprooted trees on September 1, 2 and 3, 1971 in Rock Island, Illinois. Respondent concedes that it caused the open burning of uprooted trees on the first two dates in violation of the Environmental Protection Act but claims it is not responsible for the September 3rd fire.

The evidence shows that Respondent in the construction of 2.4 miles of highway, accumulated uprooted trees and brush in piles for the purpose of burning them. Tires were placed in the piles to aid in creating a hot fire. In August 1971 the EPA became aware of the stockpiling of trees and trash and advised J. Dunteman, an officer of the company, that any burning would require an EPA permit and use of an air curtain destructor. Mr. Dunteman instructed the job superintendent to "bury" the trees or use the air curtain destructor which was owned by the Respondent company. Subsequently, on September 1, 1971 pursuant to orders of the job superintendent, fires were touched off by Respondent's employees. The superintendent testified that an assistant fire chief of the Rock Island Fire Department had given approval for the fires provided that the fires were small and kept under control. Fuel oil and tires were used to facilitate burning and the fires got out of control, burning over 4 acres before they were put out by the Rock Island Fire Department. The fire chief, on September 1, told the superintendent not to set any more fires. When the fire chief was called to the scene on September 2nd and again observed the fires he ordered a warrant for the arrest of the construction superintendent.

J. Dunteman again instructed the superintendent to cover the trees. The superintendent later testified that he had intended to comply with that order on the next working day. He did not disassemble the remaining piles of tires and trees "because it would have been a waste of money". Around 11:00 p.m. September 3 a major fire developed in the remaining brush piles. Evidence indicates that gasoline or fuel oil had been added and the fires were intentionally touched off. The wind of 20 miles per hour fanned the flames to heights of 100 to 150 feet in the air. The fire chief termed it a major fire extending over approximately five blocks. Two companies of firemen succeeded in extinguishing it by 3:30 a.m.

People who lived in the construction area testified that the smoke was dense on all three dates, with burning leaves and ashes in the air. Smoke and soot entered the homes and permeated drapes and furniture. On the third night residents used garden hoses to wet down their houses since burning residue carried up to 100 yards from the fire.

It is clear that Respondent caused the fires on September 1 and 2, 1971. We also find R. W. Dunteman Co. responsible for the September 3, 1971 fire. Although the record does not indicate that Respondent's employees set the fire, they certainly created all the conditions for a successful fire and took no action for the dismantling of the stockpiles or removal of kindling agents to prevent one. In view of our decision Mr. Dunteman will hardly agree with his superintendent that such precautions would have been "a waste of money".

It would have been simplicity itself to have used the company owned air curtain destructor. Instead Respondent made a series of deliberate decisions in disregard of the law and directly in opposition to advice given by the Environmental Protection Agency and the fire chief. The best that can be said for Respondent with regard to the third day of burning is that it was negligent in the proper supervision of waste disposal. We have previously held that such conduct creates a liability. (EPA vs. Jack Ohlman, PCB 72-244; EPA vs. J. M. Cooling, PCB 70-2). For these violations we believe a penalty of \$2000.00 appropriate.


ORDER

It is ordered that:

1. Respondent cease and desist from open burning in violation of the Environmental Protection Act.
2. Respondent shall pay to the State of Illinois by November 20, 1972 the sum of \$2000.00 as a penalty for the violations found in this proceeding.

Penalty payment by certified check or money order payable to the State of Illinois shall be made to: Fiscal Services Division, Illinois EPA, 2200 Churchill Drive, Springfield, Illinois 62706.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order was adopted this 17th day of October, 1972 by a vote of 5 to 0.


Christan L. Moffett, Clerk
Illinois Pollution Control Board