

ILLINOIS POLLUTION CONTROL BOARD
July 12, 1973

ENVIRONMENTAL PROTECTION AGENCY,)
)
 Complainant,)
)
 v.) PCB 73-31
)
RAILWAY AND INDUSTRIAL SERVICES,)
INCORPORATED,)
)
 Respondent.)

Mr. Samuel Morgan, Assistant Attorney General, on behalf of Complainant;
Mr. Robert S. Solomon on behalf of Respondent.

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

On January 26, 1973, the Agency filed Complaint against Respondent, Railway and Industrial Services, Inc., the owner and operator of a salvage yard at Crest Hill, County of Will, Illinois. Respondent, in the operation of said salvage yard, dismantles and repairs, among other things, railroad boxcars.

The Complaint charges that on thirteen specific dates, Respondent, while dismantling boxcars, caused or allowed open burning of refuse or caused or allowed a salvage operation by open burning in violation of Section 9(c) of the Environmental Protection Act, Ill. Rev. Stat., Ch. 111-1/2, Par. 1009 (c) (1971). The Complaint further charges that, on nine specific dates, Respondent allowed the open burning of boxcars in violation of Chapter 2, Part V, Rule 502(a) of the Rules and Regulations of the Illinois Pollution Control Board adopted pursuant to Section 49(c) of the Act.

This cause comes before the Board with a two-paragraph Stipulation entered into by the respective parties. The first paragraph of the Stipulation is as follows:

"On December 30, 1971, May 18, 1972, and August 11, 1972, Respondent caused or allowed open burning in the salvage yard operated by it in Crest Hill, Will County, Illinois, in violation of Rule 502(a) of the Rules and Regulations of the Illinois Pollution Control Board then in effect, and in violation of Section 9C of the Environmental Protection Act, Illinois Revised Statutes, Chapter 111-1/2, paragraph 1009(c), 1971."

Thus, paragraph one of the Stipulation constitutes an admission by Respondent of three separate instances of violation. All charges with respect to the other dates of alleged violation contained in the Complaint must be considered abandoned as such are not mentioned in the Stipulation and the Agency has not presented any evidence pertinent thereto. The sole witness at the May 29, 1973 hearing testified for Respondent in mitigation.

Regarding the December 30, 1971 violation, Mr. Erwin Vetter, Respondent's President, testified that a supervisor had permitted employees "to burn some of the scrap lumber from the boxcars, because they wanted to start a fire to keep warm" (R. 25). Mr. Vetter stated that he thereupon advised all of his supervisors that such practice would not be allowed.

Regarding the May 18, 1972 violation, Mr. Vetter testified that, although he was not certain what caused the ignition of a stack of lumber, he assumed that the fire started from sparks of an oxygen acetylene torch (R. 27). Respondent has instituted wrecking procedures which will substantially reduce the probability of a similar accident (R. 31).

In his closing argument for Respondent, Mr. Solomon stated that the sense of the Act and the rules and regulations enacted pursuant thereto is not to cover accidents or inadvertent fires not part of the regular deliberate course of conduct inherent in the operation conducted or the business conducted on the premises (R. 51). Citing McIntyre v. The Pollution Control Board, 8 Ill. App. 3rd, 1026, 291 N.E. 2nd, 253, Mr. Solomon argued that the mere occurrence of a fire is not a violation of the Act (R. 52).

It must be noted that Respondent, by its Stipulation, has admitted the violations in question. Therefore, this Board is of the opinion that, although Respondent may present evidence and argument in mitigation, it cannot now be heard to challenge fundamental liability; and this Board will not consider Respondent's argument in the abstract.

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

IT IS THE ORDER of the Pollution Control Board that:

1. Respondent, Railway and Industrial Services, Inc., shall cease and desist from violation of the Rules and Regulations Governing the Control of Air Pollution and the Environmental Protection Act.

2. Respondent shall pay to the State of Illinois, within 35 days from the date of this Order, the sum of \$500. 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, certify that the above Opinion and Order was adopted by the Board on the day of , 1973, by a vote of to .
