ILLINOIS POLLUTION CONTROL BOARD

June 23, 1971

ENVIRONMENTAL PROTECTION AGENCY	)	
	)	
v.	)	PCB # 71-41
	)	
CLAY PRODUCTS CO. et. al.	)	

Larry R. Eaton for the E.P.A. Agency
James T. Moham and Alfred B. LaBarre for the Respondent
Opinion of the Board (by Mr. Currie):

This complaint, like that in EPA v. Sauget, # 71-29 (decided May 26, 1971), charges the respondents with numerous violations of the regulations and of the statute with regard to the operation of a landfill for solid waste disposal. As in Sauget, we find the evidence establishes several of the charges and fails to establish others. We order that violations cease and a money penalty be paid.

The landfill in question, located in Springfield, is admittedly owned by respondent Clay Products and operated under lease by respondents Buerkett and Hinds. In order to assure that the owner exercises care that improper operations do not occur on his property, we think it appropriate that the prospective provisions of our order apply to it as well as to its lessees.

Count 3 of the complaint alleges open dumping in violation both of section 21 of the Environmental Protection Act and of rule 3.04 of the Rules and Regulations for Refuse Disposal Sites and Facilities (hereafter "Landfill Rules"), adopted by the Department of Public Health in 1966 and effective by virtue of section 49 (c) of the statute. Open dumping is a catchall term that embraces a number of specific infractions alleged elsewhere in the complaint. In light of our findings on these more specific counts we do not find it necessary to decide whether or not they also constitute open dumping.

Count 4 alleges open burning. Although deliberate burning was denied (R. 371), respondents conceded that on two occasions when EPA inspectors were on the premises fires were in progress, started, it is said, by discarded cigarettes (R. 371). The evidence is that some effort was made to cover the burning material (R. 65, 372) but that in one instance the fire smoldered for twelve hours (R. 380) and that no effort was made to extinguish it while the inspector was present (R. 63). As we held in EPA v. Cooling, # 70-2 (December 9, 1970), the statute and the regulations are not limited to deliberate violations. Care must be exercised to prevent fires from occurring and to extinguish them if they do. We think by exercising proper care the respondents here could have prevented the discard of lighted cigarettes and

could have ended the fires more quickly. Respondents have caused or allowed open burning.

Count 5 charges the absence of convenient sanitary facilities for employees working at the landfill, in violation of Rule 4.03 (c). But the evidence is that adequate facilities are provided at the company's office, variously described as 100 yards from the landfill gate (R. 373) and as 1,000 feet from where dumping took place (R. 88). As in the Sauget case, we find these facilities sufficient. We cannot expect toilets every thirty feet on a landfill site.

Count 6 alleges that access to the site has been permitted "at all hours of the day", in violation of Rule 5.02. But that rule does not limit hours of operation; it forbids access when there is no employee on the site. The allegation is fatally deficient.

Count 7 alleges that refuse has been dumped over a "large impractical area", contrary to Rule 5.03. The evidence on this issue is conflicting and largely subjective. Respondents testified the area open at one time was generally kept to a width of 50 to 100 feet (R. 382, 399), that the area can be and is adequately handled by their equipment (R. 399), that anything much less would cause delays in unloading trucks (R. 320). An Agency inspector testified that he had observed a working area roughly 100' x 75' to 100' (R. 164) and that in his opinion this area should have been reduced by one third to one half because it was too large to be covered in a day by the equipment available (R. 171, 181-82). We recognize the desirability of keeping the working area small, as EPA's witness urged, not only to facilitate cover but also to reduce blowing material and to lessen the attraction of pests (R. 182). But on the present record we do not find sufficient evidence that the area worked was overly large.

Count 8 alleges that unsupervised unloading has been allowed, that no portable fences were used to prevent material from blowing, and that the area was not policed to collect scattered material, all in violation of Rule 5.04. The proof is clear that on one occasion a truck was unloaded while no employee was on hand (R. 108). Such a violation creates obvious risks of improper disposal. It is the duty of the owner and operator to prevent such problems by providing supervision at all times. Moreover, it is clear that until recently there were no portable fences for use when conditions required them to restrain blowing material (R. 107, 166). There was some suggestion by respondents that this provision applies only when there is a risk that material will be blown beyond the property line (R. 139), but the suggestion lacks merit. The owner and operator are bound to keep the site itself from becoming unnecessary unsightly, and the regulation specifically requires fencing to avoid material blowing from the "unloading site", in order to keep the refuse where it is dumped. There was also testimony that blowing litter had not been collected (R. 108). Violations of Rule 5.04 were therefore shown.

Count 9 charges a failure to spread and compact refuse as required by Rule 5.06. There was evidence that refuse on one occasion was left as deposited without being spread or compacted (R. 104-05, 109). The Rule requires that refuse be spread and compacted "as rapidly as refuse is admitted to the site". The rule is clear; equipment must be operating immediately upon deposit of refuse. A violation was shown.

Count 10 alleges failure to cover refuse at the end of each working day as required by Rule 5.07. Violations were clearly shown. First, there was proof that recognizable refuse items remained uncovered for two consecutive days (R. 40, 67-68, 79, 82-83, 109-110), as in the Sauget case. Second, there was testimony that some refuse requiring cover lay exposed, and that other lay inadequately covered, some of it in water or in liquid waste (R. 32-33, 113-14, 116-17, 168, 189-90, 206, 211), since before the dates alleged in the complaint (R. 95-96, 110, 137). While the original failure to cover these old items as the refuse was deposited was not charged in the complaint, the duty to cover is a continuing one extending to "all exposed refuse" at the end of each day.

Count 11 alleges the discharge of hazardous liquids at the landfill site without the approval required by Rule 5.08 (see R. 113, 208, 359). The respondents demonstrated approval by the Department of Health for the deposit of oil wastes in Impoundment No. 1, where most of the liquid waste was observed (R. 63-64, 113, 359, 388, 412, 434 and Ex. R. 3-1). Two Agency witnesses testified to oil in a second impoundment that the respondents asserted was not used for this purpose (R. 167-68, 179-80, 183-84, 208, 359, 388). Whether using two pits for oil would violate the Health Department's order to "contain the dumping of the hazardous materials received from Sorco Oil and Refining Company in a separate pit" we need not decide, for the undisputed evidence by one Agency witness was that an oily liquid had also been seen on the ground in the vicinity of Impoundment No. 1 (R. 208-09). The presence of this waste in April of 1971 gives rise to the inference it was put there sometime since the preceding October. Whether or not the respondents put it there, they had the obligation, as in the case of open burning, to prevent others from doing so. The violation is established. All oil deposit has now ceased because the Agency has refused to renew permission (R. 412-14).

Count 12 alleges the absence of rodent control under Rule 5.09. As we held in Sauget, proper cover is a type of rodent control that is always required. But further controls are necessary only "as directed by the Department" (now the Agency), and since it was stipulated there has been no such direction in the past (R. 121), there is no proof of violation.

Counts 13 and 14 allege improper salvage operations and scavenging, in violation of Rules 5.10 and 5.12 (a). The relation between

salvaging and scavenging is not altogether clear; suffice it that on one occasion the undisputed testimony is that an unidentified man was seen manually sorting dumped refuse (R. 122), which is flatly forbidden. It is the owner's and operator's duty to prevent such activities.

Count 15 alleges that refuse has been disposed of in standing water in violation of Rule 5.12 (c). There is much evidence that refuse was seen in water (R. 32-33, 206), and this evidence was relied on above to show a violation of the cover requirements. But Rule 5.12 (c) requires a showing that refuse was put into the water; here we cannot infer either that the water was there before the refuse (R. 64) or that the deposit was chargeable to these respondents (R. 72). This is not to say this type of violation can be proved only by eyewitnesses to the dumping itself, but we find the record inconclusive in this case. See EPA v. Amigoni, PCB # 70-15, (February 17, 1971). There was however, proof that o one occasion burning refuse was pushed into water during an effort to put it out (R. 45, 379). This seems an undesirable way to combat fire, in light of the regulation; but we cannot say it is never a permissible choice between two evils.

Count 16 alleges that inadequate measures have been taken to prevent contamination of ground and surface waters, in violation of Rule 4.02 (a) and of sections 12 (a) and (d) of the Act, which prohibit water pollution and water pollution hazards. There is proof that, as the result of leaching through refuse (R. 285), water impounded on the site is high in oxygen-demanding materials and total solids,[1] (R. 274-75, 279-82), so that its discharge to stream or aquifer might cause pollution, and there is proof that in one impoundment the water level was near to overflowing (R. 191-92, 367). But there is insufficient proof that any water escaping from these ponds would be likely to reach either stream or aquifer (R. 192, 242-43, 278, 297, 312, 327, 361, 367-68), and consequently we find no violation in this regard. We do think respondents would be well advised in order to escape future complaints to avoid the mixing of refuse and water on their premises.

Count 17 alleges unsightly and improper operation in purported violation of section 20 of the Act. But that section forbids nothing; it is a statement of policy for use in interpreting the operative sections of the Act.

In sum, we find violations with respect to open burning, unsupervised unloading, spreading, compacting, and covering, fencing,the deposit of liquids, scavenging, and the collection of scattered materials. The testimony of a County Health inspector that the site was generally well operated (R.319-65) does not contradict EPA's case, but it has weight in mitigation. We are told by EPA that operation has since improved in many respects (R. 130-131). We shall order that no further infractions occur, and to deter future violations we shall assess a penalty of $500. The sum is smaller than in Sauget and earlier cases, for the violations appear less serious.

1. Respondents sought to exclude several test results on the ground the Agency's witness had not performed the tests herself. For reasons given by the hearing officer this motion was properly denied (R. 264-66).

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

ORDER

1. Clay Products Co., Merle K. Buerkett, and Lowe G. Hinds shall cease and desist from violations of the Environmental Protection Act and of the Rules and Regulations for Refuse Sites and Facilities, as follows:

   a) No open burning shall be allowed.
   b) No unloading shall be permitted without supervision.
   c) Refuse shall be spread and compacted as rapidly as it is admitted to the site.
   d) Refuse shall be covered daily as required by the Rules.
   e) Any exposed refuse presently on the site shall be covered as required by the Rules.
   f) Portable fences shall be provided whenever weather conditions require in order to reduce the scattering of litter, and scattered litter shall be collected.
   g) The discharge of liquids shall not be allowed except as shall be authorized by the Agency in the future.
   h) Scavenging shall not be permitted.

2. Merle K. Buerkett and Lowe G. Hinds are jointly and severally ordered to pay to the State of Illinois on or before July 1, 1971, the total sum of $500 as a penalty for the violations described in the Board's opinion.

I, Regina E. Ryan, Clerk of the Board, hereby certify that the above Opinion and Order was entered on the 23 day of June, 1971.

Regina E. Ryan