

ILLINOIS POLLUTION CONTROL BOARD  
December 19, 1996

COUNTY OF JACKSON, ILLINOIS,            )  
  )  
          Complainant,                            )  
  )  
          v.    )     AC 96-57  
  )     (Administrative Citation)  
  )  
SOUTHERN ILLINOIS REGIONAL            )  
LANDFILL (DeSoto/SIRL Site)            )  
  )  
          Respondent.                            )

DANIEL W. BRENNER, STATE’S ATTORNEY, APPEARED ON BEHALF OF JACKSON COUNTY;

ROBERT F. DABBS, JR., APPEARED ON BEHALF OF SOUTHERN ILLINOIS REGIONAL LANDFILL.

INTERIM OPINION AND ORDER OF THE BOARD (by J. Theodore Meyer):

This matter is before the Board pursuant to a petition for review timely filed by respondent, Southern Illinois Regional Landfill (SIRL), on July 22, 1996. SIRL requests review of the administrative citation issued by the County of Jackson, Illinois (County) on June 20, 1996 and filed with the Board on June 24, 1996. Pursuant to the Illinois Environmental Protection Act (Act) parties may appeal an administrative citation within 35 days of the date of service of the citation. (415 ILCS 5/31.1(b)(4) (1994).)

On August 1, 1996 the Board accepted the petition for review and set the matter for hearing. Hearing was held before Chief Hearing Officer Michael L. Wallace on November 6, 1996 in Murphysboro, Illinois; no members of the public attended.<sup>1</sup> No post-hearing briefs were filed.

The administrative citation alleges four separate violations of: Section 21(o)(1), causing or allowing refuse in standing waters; Section 21(o)(2), causing or allowing leachate flows to enter waters of the State; Section 21(o)(5), causing or allowing uncovered refuse to remain from previous day’s operations; and Section 21(o)(12), causing or allowing litter to be uncollected and not contained after the end of the previous day’s operations. Each violation carries a statutory civil penalty of \$500 if the Board finds that such violation occurred, for a total penalty of \$2,000. For the reasons set forth below, the Board today finds four violations based upon the County’s

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<sup>1</sup> The hearing transcript will be referred to as (Tr. at \_\_\_).

allegations that SIRL has violated sections 21(o)(1), (2), (5) and (12) of the Act. The Board will impose a penalty of \$2,000 plus any associated hearing costs incurred by the County and the Board.

### BACKGROUND

This administrative citation was issued to SIRL as the operator of a sanitary landfill located in Jackson County, Illinois, designated with Site Code No. 0770200002. The facility is commonly known to the Agency as the DeSoto/SIRL site. On the basis of inspections conducted by Field Inspector George Browning, Jackson County Health Department on May 1, 1996, complainant determined through direct observation that SIRL had operated the site in violation of Section 21(o), subsections (1), (2), (5) and (12) of the Act. (Comp. at 2.)

### APPLICABLE LAW

The Act established that in order to seek enforcement by way of the administrative citation process for violations of Section 21(o), the County must establish that the owner or operator conducted the sanitary landfill operation in violation of the Act. If the record demonstrates that such violation occurred then the Board must adopt an order finding a violation and impose the specified penalty of \$500 per violation. The only mitigation of a violation is if "...the person appealing the citation has shown that the violation resulted from uncontrollable circumstances", in which case the Board shall adopt an order which imposes no penalty. (415 ILCS 5/31.1(d)(2).)

The administrative citation issued against SIRL alleges that Section 21(o), subsections (1), (2), (5) and (12) were violated at the site. Section 21(o) provides that no person shall:

Conduct a sanitary landfill operation which is required to have a permit under subsection (d) of this Section, in a manner which results in any of the following conditions:

1. refuse in standing or flowing waters;
2. leachate flows entering waters of the State;
5. uncovered refuse remaining from any previous operating day or at the conclusion of any operating day, unless authorized by permit;
12. failure to collect and contain litter from the site by the end of each operating day.

(415 ILCS 5/21(o).)

Section 3.31 of the Act defines “refuse” as “waste”, which in turn is defined in Section 3.53 as, inter alia, “garbage...or other discarded material, including solid, liquid, industrial, commercial, mining and agricultural operations, and from community activities...” (415 ILCS 5/3.31, 3.53.)

In St. Clair County v. Louis Mund (August 22, 1991), AC 90-64, 125 PCB 381, the Board adopted the definition of “litter” contained in the Litter Control Act:

“litter” means any discarded, used or unconsumed substance or waste. “Litter” may include, but is not limited to, any garbage, trash, refuse, debris, rubbish, grass clippings or other lawn or garden waste, newspaper, magazines, glass, metal, plastic or paper containers or other packaging, construction material, abandoned vehicle...or anything else of an unsightly or unsanitary nature which has been discarded, abandoned or otherwise disposed of improperly.

(415 ILCS 105/3.)

### FACTS AND ARGUMENTS

The County presented testimony of George Browning who conducted the on-site inspection of SIRL’s facility on May 1, 1996, along with Rex Bermeister from the Agency. (Tr. at 5, 19.) The inspection took place at 6:42 a.m. and Browning testified that the weather that morning was dry and warm, and there had been no hard freeze the evening prior to the inspection. (Tr. at 10, 16-17.) Browning and Bermeister took photographs of the active area of the landfill (Exhibit 3, photos 1,2); exposed refuse in the active area (Exhibit 3, photos 3-6); and wind blown material trapped in trees on the southern edge of the landfill (Exhibit 3, photos 6-8) (Tr. at 9-11.) Browning testified that it was not particularly windy during the inspection, indicating that the litter seen in the photographs was left over from a previous operating day. (Tr. at 12.) Browning further stated that he photographed an area toward the entrance of the landfill that vehicles drive on to access the active area, and that has had leachate problems in the past. The photographs show an inactive area with intermediate cover and refuse showing through the cover. (Tr. at 12-14, Exhibit 3, photos 9, 10.) Additional photographs taken in the same area show multiple leachate seeps. (Exhibit 3, photos 11, 12.)

Further photographs depict an access road sloping downward toward an on-site lake with leachate pooling in areas, and flowing into the lake. (Tr. at 14-15, Exhibit 3, photos 13-18.) Browning observed that the leachate had a strong odor, dark color and was thick and gelatinous in spots. (Tr. at 14.) Browning testified that during the inspection he spoke to site manager, Robert Dabbs, and notified him of the alleged violations discovered that day. Browning stated that subsequent inspections of the facility revealed that the problems have been corrected. (Tr. at 18.)

Robert Dabbs, district manager of Continental Waste Industries, and manager of the landfill at issue, testified on behalf of SIRL, stating that he was aware of the violations and has corrected the problems. (Tr. at 21-23.) Dabbs testified that heavy rains caused the standing water problems. (Tr. at 24.) Dabbs did not specifically address the leachate flows; however, Browning testified that leachate from the older sections of the landfill may occur because Part 807 of the Board's regulations do not require a leachate collection system for those sections. (Tr. at 21.)

Regarding the uncovered refuse violation, Dabbs explained that the landfill uses a daily cover of six inches of soil, or as alternative cover, either a silt woven tarp that is on-site at all times, or shredded tires. (Tr. at 23-24.) Dabbs testified that the weather was dry on April 30 and May 1, 1996, but that it had rained 4.85 inches of rain three days before the inspection. (Tr. at 24.) Dabbs stated that that amount of rain usually shuts down the equipment, although the construction crew attempts to use dozers and chains to drag trucks in and out of the landfill, and tries to stockpile enough cover at the active area before it rains. (Tr. at 24-25.) Dabbs further testified that, with all the rain, covering the landfill was like smearing mud, and the crew used its best efforts under those conditions. (Tr. at 27-28.)

Dabbs also indicated that high winds had occurred in April which caused pooling of water in the landfill and debris to be blown a quarter mile off the property. As a result, Dabbs stated that he shut down the trucking crew and had 15 to 20 people picking up litter off the property. Dabbs testified that the litter could not be contained all in one day. (Tr. at 27.) Dabbs also stated that SIRL has repaired the fencing to contain the litter on windy days, but that no fencing would adequately contain litter when high winds occur. (Tr. at 32.)

Regarding leachate flowing into the on-site lake, Dabbs testified that SIRL has a permit from the U.S. Army Corps of Engineers to drain the lake, line it with clay and landfill it. In addition, final cover and liner is being placed on inactive areas of the landfill which, Dabbs states, will stop leachate flow. (Tr. at 26-29.)

#### DISCUSSION

After careful review of the record, the Board finds that the County met its burden of proving that SIRL violated Section 21(o) of the Act when it caused or allowed refuse in standing or flowing waters; caused or allowed leachate flows to enter waters of the State; caused or allowed uncovered refuse to remain from a previous operating day; and failed to collect and contain litter from the site by the end of each operating day. The Board next considers whether SIRL has demonstrated that the alleged violations resulted from uncontrollable circumstances. If the Board so determines, then no violations would be found and no penalties imposed. (415 ILCS 5/31.1(d)(2).)

SIRL contends that the 4.85 inches of rain and accompanying winds that occurred three days prior to the inspection were uncontrollable circumstances which caused the alleged violations. The Board notes its general rule that adverse weather conditions normally do not warrant a finding of uncontrollable circumstances. (In the Matter of Dan Heusinkved, County Clerk County of Whiteside, State of Illinois (January 21, 1988), AC 87-25; Montgomery County v. Rita Hefley (April 21, 1994) AC 93-45.) The Board has allowed an exception for uncontroverted evidence of litter frozen to the ground (St. Clair County v. J&R Landfill, Inc. (May 10, 1990), AC 89-18); however, SIRL has made no similar showing of uncontroverted evidence of uncontrollable circumstances.

First, SIRL offered no evidence of uncontrollable circumstances that would have prevented the proper prevention of standing water and leachate flows. Second, regarding uncovered refuse remaining from a previous operating day, SIRL offered testimony that actually indicated the refuse could be accessed and cleaned up in the two days between the rain fall and the inspection. Specifically, Robert Dabbs testified that prior to May 1, 1996 inspection, 15-20 people spent time off-site collecting litter, yet Dabbs offered no evidence to explain why these efforts could not continue until all litter was collected. Regarding the violation of uncovered refuse, Dabbs claimed that conditions became too muddy to adequately cover the landfill's active area, yet also testified that SIRL uses two types of alternative cover, one of which is kept on-site at all times. Mr. Dabbs provided no explanation as to why neither alternative was used when soil cover became too muddy to be effective. Failure to adequately prepare for adverse weather conditions is not evidence of uncontrollable circumstances. (See *generally* IEPA v. ESG Watts, Inc. (June 7, 1990), AC 89-131.) Therefore, the Board finds that adverse weather conditions did not result in uncontrollable circumstances in this case.

SIRL also offered testimony that the property has been cleaned up and that a fence was repaired to prevent litter from being blown off-site. (Tr. at 32.) However, the Board has long held that evidence of post-citation correction activities by the citation recipient are not material as to whether a violation had occurred and accordingly, not material to the Board's review of the citation. (In re: Lincoln Chamber of Commerce (May 25, 1989), AC 89-26, 99 PCB 325.) Clean-up of the site is not a mitigating factor under the administrative citation program. (IEPA v. Dennis Grubach (October 16, 1992), AC 92-3, 136 PCB 425.)

### CONCLUSION

Based on review of the record and the pertinent provisions of the Act, the Board finds that SIRL conducted its sanitary landfill facility in a manner which resulted in the following conditions as evidenced in the administrative citation and testimony offered by the County: refuse in standing or flowing water; leachate flowing into State waters; uncovered refuse; and uncollected and unconfined litter. The Board further finds that

none of the explanations offered by SIRL served to justify a finding of uncontrollable circumstances. Accordingly, SIRL is found to have violated Section 21(o) of the Act; therefore, the Board affirms the County's determination of violation and assessment of penalty.

### PENALTY AND COSTS

Penalties in administrative citation actions are prescribed by Section 42(b)(4) of the Act which states:

In an administrative citation action under Section 31.1 of this Act, any person found to have violated any provision of subsection (o) or (p) of Section 21 of the Act shall pay a civil penalty of \$500 for each violation of each such provision, plus any hearing costs by the Board and the Agency. Such penalties shall be made payable to the Environmental Protection Fund, to be used in accordance with the provisions of the Environmental Protection Fund Act except that if a unit of local government issued the administrative citation, 50% of the civil penalty shall be payable to the unit of local government.

(415 ILCS 5/42(b)(4).)

In the Board's final order in this case, SIRL will be ordered to pay a civil penalty of \$500 for each violation as found, totaling, \$2,000. Further, pursuant to Section 42(b)(4), SIRL is also required to pay hearing costs incurred by Board and the County. Those costs are not contained in the record at this time. Therefore as part of this interim order, the Clerk of the Board and the County are ordered to each file a statement of costs, supported by affidavit, with the Board and with service upon SIRL.

This interim opinion constitutes the Board's interim findings of fact and conclusions of law in this matter. A final order will be issued pursuant to the interim order which follows.

### INTERIM ORDER

1. Respondent, Southern Illinois Regional Landfill (SIRL), is hereby found to have violated 415 ILCS 5/21(o)(1), (2), (5), and (12) (1994) at its Jackson County facility on May 1, 1996.
2. The County of Jackson is hereby directed to file a statement of its hearing costs, supported by affidavit, with the Board and with service on SIRL within 14 days of this order. Within the same 14 days, the Clerk of the Pollution Control Board shall file a statement of the Board's costs, supported by affidavit and with service upon SIRL.

3. SIRL is hereby given leave to file a reply to the filings ordered in paragraph 2 within 14 days of receipt of that information, but in no case later than 40 days after the date of this order.
4. After the deadline for filing such information and reply thereto has expired, the Board will issue a final order assessing the statutory penalty, and making the appropriate award of costs.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above interim opinion and order was adopted on the \_\_\_\_ day of \_\_\_\_\_, 1996, by a vote of \_\_\_\_\_.

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Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board