

ILLINOIS POLLUTION CONTROL BOARD
April 4, 2001

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Petitioner,)	
)	
v.)	PCB 01-135
)	(Enforcement - Land)
PATRICK ROBERTS LAND TRUST,)	
)	
Respondent.)	

ORDER OF THE BOARD (by S.T. Lawton, Jr.):

This matter involves a complaint against respondent Patrick Roberts Land Trust for allegedly violating the Environmental Protection Act (Act) and Board regulations at its facility, known as the Old Weaver Landfill. The landfill is located in Washington Township, Tazewell County. The complaint specifically alleges that the respondent: caused or allowed the open dumping of waste resulting in litter; caused, allowed, or threatened the discharge of contaminants into the environment so as to cause or tend to cause water pollution; and lacked a permit from the Illinois Environmental Protection Agency (Agency) to conduct a waste storage, treatment, or disposal facility. This conduct is in alleged violation of Sections 12(a) and 21(a), (d), and (p) of the Act (415 ILCS 5/12(a), 21(a), (d), (p) (2000)), and Section 812.101(a) of the Board’s regulations (35 Ill. Adm. Code 812.101(a)).

On January 10, 2002, the complainant filed a motion either for summary judgment or for a determination of certain major issues underlying the respondent’s liability for violations of the Act. Mot. at 1. The respondent did not file a response to the motion. The Board grants the complainant’s motion for summary judgment on the issue of liability for the reasons stated below, and directs the parties to hearing for more information concerning the appropriate penalty in this matter.

PROCEDURAL HISTORY

In response to the April 3, 2001 complaint, the respondent filed a June 6, 2001 answer that admitted several factual allegations. On June 21, 2001, the complainant served a request for the admission of facts on the respondent. In its response, the respondent either admitted that the factual allegations were true or stated that it did not have sufficient knowledge as to whether the allegations were true.

The complainant filed a motion for summary judgment on January 10, 2002, and attached the affidavit of Ronald Mehalic, a field inspector with the Agency, in support of its motion. The affidavit included photographs taken of the site on two different occasions. The respondent did not file a response to the motion for summary judgment, thereby waiving any objections to the motion. See 35 Ill. Adm. Code 191.500(d).

UNCONTESTED FACTS

The respondent, in its answer to the complaint and response to the complainant's request to admit facts, admits the following to be true. Respondent owns the Old Weaver Landfill, which is located in the SE 1/4 of the SW 1/4 of Section 9, T.26N, R3W, in Washington Township, Tazewell County. *See* Ans. at 1; Resp. at 1. The Old Weaver Landfill accepted waste from 1966 to 1974. Resp. at 1. Bessie Wyss owned the landfill property and Glenn Weaver operated the landfill. *Id.* Final cover was placed on the landfill in 1975, and the Agency approved closure of the Old Weaver Landfill by letter dated May 18, 1976. *Id.*

Respondent admits that open-dumped waste, including wood, shingles, bedsprings, chairs, mattresses, rusted metal objects, and white goods, existed at the site on March 23, 1999. Resp. at 1. Respondent does not have a permit from the Agency to operate a waste-storage, waste-treatment, or waste-disposal operation at the Old Weaver Landfill site. Resp. at 2.

The complainant alleged several facts concerning Agency inspections of the Old Weaver Landfill on March 23, 1999 and April 18, 2000, as well as the current condition of the site in its motion for summary judgment. The complainant provided a sworn affidavit and photographs by Agency field inspector, Ronald Mehalic to verify the facts alleged in its complaint. The respondent did not at any time deny these facts. The respondent also waived its objection by not responding to the motion for summary judgment or objecting to information in the supporting affidavit. *See* 35 Ill. Adm. Code 191.500(d). The Board accordingly finds the factual allegations by the complainant in its motion for summary judgment, as supported by Mehalic in his affidavit, are uncontested facts.

The Board specifically finds that the following statements in the affidavit by Mehalic are uncontested facts in this matter. Mehalic conducted an inspection at the Old Weaver Landfill site on March 23, 1999. Affidavit at 3. On that date, Mehalic observed open-dumped refuse at the northeast corner of the property, including wood waste, shingles, bed springs, chairs, mattresses, various rusted objects, and white goods. *Id.* Mehalic took photographs of the waste, which are attached to his affidavit. *Id.* Mehalic attests that photographs labeled 5, 6, 7, 8, 9, 10, and 12 submitted with the affidavit truly and accurately depict the conditions that he observed on March 23, 1999.

Mehalic noticed after further investigation of the northeast corner of the site that refuse was protruding from ravines where the cover material of the Old Weaver Landfill eroded into the landfill's side slopes. Affidavit at 4. Mehalic saw "water flowing through the ravines and in direct contact with the exposed refuse." *Id.* Mehalic stated that it appeared that flowing water had formed the ravines. *Id.* Mehalic said that the uncovered refuse was part of the closed landfill. *Id.* Mehalic also observed a pool of leachate from the Old Weaver Landfill at the northeastern lower side of the landfill's slope. *Id.* Mehalic stated that a tributary to the Ten Mile Creek runs along the north side of the property near the erosion rills. *Id.*

On April 18, 2000, Mehalic re-inspected the site of the Old Weaver Landfill. Affidavit at 4. Mehalic stated that the conditions were the same as when he inspected the site on

March 23, 1999. Specifically, he observed the same types of open-dumped waste in the northeastern corner of the site. *Id.* He also observed water running through the same ravines in direct contact with refuse from the Old Weaver Landfill. Affidavit at 5. Mehalic attached photographs of his observations on that date to his affidavit. *Id.* He attests that photographs labeled 13 through 21 truly and accurately depict the conditions that he observed at the Old Weaver Landfill on April 18, 2000. *Id.*

STATUTORY AND REGULATORY FRAMEWORK

The complaint in this matter alleges that the respondent is in violation of Sections 12(a) and 21(a), (d), and (p) of the Act (415 ILCS 5/12(a), 21(a), (d), (p) (2000)), and Section 812.101 of the Board regulations (35 Ill. Adm. Code 812.101). The violations can be broken down into three counts of water pollution, litter, and permit requirement violations. The statutory and regulatory provisions for each count are defined below.

Water Pollution

Section 12(a) of the Act states that no person shall:

Cause or threaten or allow the discharge of any contaminants into the environment in any State so as to cause or tend to cause water pollution in Illinois, either alone or in combination with matter from other sources, or so as to violate regulations or standards adopted by the Pollution Control Board under this Act. 415 ILCS 5/12(a) (2000).

The Act defines a contaminant as “any solid, liquid, or gaseous matter, any odor, or any form of energy, from whatever source.” 415 ILCS 5/3.06 (2000). The Act also defines water pollution as an:

alteration of the physical, thermal, chemical, biological or radioactive properties of any waters of the State, or such discharge of any contaminant into any waters of the State, as will or is likely to create a nuisance or render such waters harmful or detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate uses, or to livestock, wild animals, birds, fish, or other aquatic life. 415 ILCS 5/3.55 (2000).

Litter

Section 21(a) of the Act provides that “no person shall . . . cause or allow the open dumping of any waste.” 415 ILCS 5/21(a) (2000).

The Act defines open dumping as “the consolidation of refuse from one or more sources at a disposal site that does not fulfill the requirements of a sanitary landfill.” 415 ILCS 5/3.24 (2000). Waste is defined in pertinent part as:

any garbage . . . or other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining and agricultural operations, and from community activities
415 ILCS 5/3.53 (2000).

Section 21(p) of the Act states that no person shall:

In violation of subdivision (a) of this Section, cause or allow the open dumping of any waste in any manner which results in any of the following occurrences at a dump site:

1. litter 415 ILCS 5/21(p)(1) (2000).

Permit Requirement Violations

Section 21(d) of the Act specifies in relevant part that no person shall:

Conduct any waste-storage, waste-treatment, or waste-disposal operation:

1. without a permit granted by the Agency . . . ; [or]
2. in violation of any regulation or standards adopted by the Board under this Act 415 ILCS 5/21(d)(1), (2) (2000).

Section 812.101(a) of the Board regulations states that:

All persons, except those specifically exempted by Section 21(d) of the Environmental Protection Act (Act) (Ill. Rev. Stat. 1991, ch. 111 1/2, par. 1021(d)) [415 ILCS 5/21(d)] shall submit to the Agency an application for a permit to develop and operate a landfill. The applications must contain the information required by this Subpart and by Section 39(a) of the Act, except as otherwise provided in 35 Ill. Adm. Code 817. 35 Ill. Adm. Code 812.101(a).

STANDARD OF REVIEW

Summary judgment is appropriate when the pleadings and depositions, together with any affidavits and other items in the record, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. *See Dowd & Dowd, Ltd. v. Gleason*, 181 Ill. 2d 460, 693 N.E.2d 358 (1998). In ruling on a motion for summary judgment, the Board “must consider the pleadings, depositions, and affidavits strictly against the movant and in favor of the opposing party.” *Dowd*, 181 Ill. 2d at 483, 693 N.E.2d at 370.

Summary judgment “is a drastic means of disposing of litigation,” and therefore it should only be granted when the movant’s right to the relief “is clear and free from doubt.” *Dowd*, 181 Ill. 2d at 483, 693 N.E.2d at 370, citing *Purtill v. Hess*, 111 Ill. 2d 229, 240, 489 N.E.2d 867, 871 (1986). However, a party opposing a motion for summary judgment may not rest on its pleadings, but must “present a factual basis, which would arguably entitle [it] to a judgment.” *Gauthier v. Westfall*, 266 Ill. App. 3d 213, 219, 639 N.E.2d 994, 999 (2nd Dist. 1994).

DISCUSSION

The complainant alleges in its motion for summary judgement that no genuine issue of material fact concerning respondent’s liability remains in the case, and the complainant is entitled to summary judgment in its favor as a matter of law. Mot. at 2, 4. Since the respondent did not file a response to the complainant’s motion, he has waived objection to the motion. *See* 35 Ill. Adm. Code 191.500(d).

The Board finds that the facts in this matter are not in dispute. Accordingly, the Board discusses whether the complainant is entitled to summary judgment as a matter of law. The Board discusses the merit of each of the three counts of the complaint in turn.

Water Pollution

The complainant first alleges that respondent violated Section 12(a) of the Act (415 ILCS 5/12(a) (2000)) by causing, threatening, or allowing the discharge of contaminants into the environment so as to cause or tend to cause water pollution. *See* Comp. at ; Mot. at 7. Mehalic states in his affidavit that, on March 23, 1999 and April 18, 2000, he observed water flowing through ravines in direct contact with exposed refuse on the site of the Old Weaver Landfill. Mehalic also said that he saw a pool of leachate from the landfill. Mehalic stated that water that formed the ravines had eroded the cover material from the Old Weaver Landfill.

Section 12(a) can be broken down into four main elements. The respondent must (1) cause, threaten, or allow a discharge of (2) a contaminant (3) into the environment (4) so as to cause or tend to cause water pollution. The Board finds that the complainant sufficiently proved each element for the reasons expressed below.

The respondents “caused, threatened, or allowed” a discharge of contaminants at the Old Weaver Landfill. The complainant provided sufficient evidence that the respondent was capable of controlling the pollution, and was in control of the premises where the pollution occurred. *See People v. A. J. Davinroy Contractors*, 249 Ill. App. 3d 788, 793, 618 N.E.2d 1282, 1286 (5th Dist. 1993). Respondent admitted that it owns the Old Weaver Landfill. It also admitted that

there was waste on the site on March 23, 1999. According to the uncontested affidavit by field inspector Mehalic, the waste was still present on April 18, 2000. Mehalic also stated that water cut ravines into the slope of the Old Weaver Landfill, eroding its cover material and running across exposed refuse. Respondent had control over the property during both inspections by Mehalic when he saw water in the ravines and leachate seeping from the landfill.

The respondent in its answer and response to request for admission of facts stated that it did not know about the discharges at the site, as described by the complainants. Ans. at 2; Resp. at 1-2. However, a “lack of knowledge that the discharge existed provides no defense.” Perkinson v. PCB, 187 Ill. App. 3d 689, 694, 543 N.E.2d 901, 904 (3rd Dist. 1989), quoting Meadowlark Farms v. PCB, 17 Ill. App. 3d 851, 861, 308 N.E.2d 829, 837 (1974). The Act “is *malum prohibitum*, no proof of guilty knowledge or *mens rea* is necessary to a finding of guilt.” *Id.* The Board has similarly held the owner of a coal mine liable for water pollution when rainwater seeped through a mine refuse pile. See Perkinson, 187 Ill. App. 3d at 694, 543 N.E.2d at 904, citing Freeman Coal Mining Corp. v. PCB, 21 Ill. App. 3d 157, 313 N.E.2d 616 (1974).

The Board finds that the leachate pool and water that runs through the waste at the Old Weaver Landfill are “contaminants,” which are defined by the Act as “any solid, liquid, or gaseous matter, any odor or any form of energy, from whatever source.” 415 ILCS 5/3.06 (2000). These contaminants were discharged into the environment. Mehalic saw the leachate pooling on the ground, and water running through waste at the site. Affidavit at 4.

The close proximity of the leachate and ravines to a creek tributary is sufficient to show that the discharges cause or tend to cause water pollution. Water pollution is defined as:

An alteration of the physical, thermal, chemical, biological or radioactive properties of any waters of the State, or such discharge of any contaminant into any waters of the State, as will or is likely to create a nuisance or render such waters harmful or detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate uses, or to livestock, wild animals, birds, fish, or other aquatic life. 415 ILCS 5/3.55 (2000).

Mehalic stated in his affidavit that both the leachate seep and water running through the ravines were in close proximity to a tributary to the Ten Mile Creek, which runs near the erosion rills along the north side of the property. Affidavit at 4, 5. The Board finds the nearby tributary to the Ten Mile Creek to be “waters of the State,” which are defined by the Act as “all accumulations of water, surface and underground, natural, and artificial, public and private, or parts thereof, which are wholly or partially within, flow through, or border upon this State. 415 ILCS 5/3.56 (2000).

The Board accordingly finds that the respondent violated Section 12(a) of the Act (415 ILCS 5/12(a) (2000)) by causing, allowing, or threatening the discharge of contaminants, in the form of leachate and flowing water exposed to landfill refuse, near a creek tributary so as to cause or tend to cause water pollution.

Litter

The complainant alleges in its second count that the respondent violated open dumping and litter provisions under Sections 21(a) and (p)(1) of the Act (415 ILCS 5/21(a), (p)(1) (2000)). Complainant contends that the respondent violated Section 21(a) of the Act when it “caused or allowed the open dumping of waste.” 415 ILCS 5/21(a) (2000). The complaint alleges that respondent consequently violated Section 21(p)(1) of the Act by causing or allowing the open dumping of waste at a dumpsite, resulting in litter. *See* 415 ILCS 5/21(p)(1) (2000).

The respondent’s admissions of fact and the uncontested facts in the affidavit by Mehelic support the finding that the respondent is in violation of these two provisions of the Act. The respondent admitted that open-dumped waste, including wood, shingles, bed springs, chairs, mattresses, rusted metal objects, and white goods, existed at the site on March 23, 1999. Resp. at 1. The Board finds that the wood waste, shingles, bed springs, chairs, mattresses, various rusted objects and white goods are “waste,” which the Act defines as “any garbage . . . or other discarded material, including solid . . . material resulting from industrial, commercial, mining and agricultural operations, and from community activities” 415 ILCS 5/3.53 (2000).

The Board also finds that the waste that accumulated on the site qualifies as “litter”. Since the Act does not define litter, the Board looks to the Litter Control Act for guidance. The Litter Control Act defines litter as:

“LITTER means any discarded, used or unconsumed substance or waste. “Litter” may include, but is not limited to, any garbage, trash, refuse, debris, rubbish, . . . newspaper, magazines, glass, metal, plastic or paper containers or other packaging construction material, . . . furniture, oil, . . . or anything else of any unsightly or unsanitary nature, which has been discarded, abandoned, or otherwise disposed of improperly. 415 ILCS 105/1 (2000).

The material observed by Mehelic at the Old Weaver Landfill site falls within the definition of litter because it is discarded and used waste. As stated above, the respondent admitted that open-dumped waste, including wood, shingles, bed springs, chairs, mattresses, rusted metal objects and white goods, existed at the site on March 23, 1999. Resp. at 2. This waste was disposed of improperly at the Old Weaver Landfill. The respondent admitted that it does not have a permit to operate a waste-storage, waste-treatment, or waste-disposal operation at the Old Weaver Landfill. Since the respondent did not have a permit to store waste at the Old Weaver Landfill, the property also qualifies as a dumpsite under Section 21(p) of the Act (415 ILCS 5/21(p) (2000)).

The Board next addresses whether the respondent caused or allowed the open dumping of this waste at the Old Weaver Landfill. As stated previously, a person can cause or allow a violation of the Act without knowledge or intent. *See Utilities Unlimited*, AC 97-41, slip op. at 5 (July 24, 1997), citing *People v. Fiorini*, 143 Ill.2d 318, 574 N.E.2d 612 (1991). The Board previously found that:

[P]resent inaction on the part of the landowner to remedy the disposal of waste previously placed on the site constitutes “allowing” litter in that the owner allows the illegal situation to continue. Utilities Unlimited, AC 97-41, slip op. at 5.

The Board recently held that the operator of Utilities Unlimited was in violation of Section 21(p)(1) of the Act (415 ILCS 5/21(p)(1) (2000)) because he left litter that was previously dumped on the site to remain there when he was responsible for the site. Utilities Unlimited, AC 97-41, slip op. at 5. Such inaction qualified as an allowance under Section 21(p) of the Act. 415 ILCS 5/21(p)(1) (2000). Similarly, the respondent in this case, as owner of the Old Weaver Landfill, allowed accumulated litter to remain on the site. The Board accordingly finds that the respondent violated Sections 21(a) and (p)(1) of the Act (415 ILCS 5/21(a), (p)(1) (2000)).

Permit Requirement Violations

The complainant alleges in the last count of its complaint that the respondent lacked a permit from the Agency to develop and operate a landfill, in violation of Section 21(d)(1) of the Act (415 ILCS 5/21(d)(1) (2000)) and Section 812.101(a) of the Board regulations (35 Ill. Adm. Code 812.101(a)). The Board finds that the respondent violated Section 21(d) of the Act because it did not have a permit from the Agency to conduct a waste-storage, waste-treatment, or waste-disposal operation at the Old Weaver Landfill. As stated above, the respondent admitted that it lacked a permit from the Agency. It also admitted that open-dumped waste existed on the Old Weaver Landfill site on March 23, 1999. Mehalic stated in his affidavit that this waste was still on the site during his April 18, 2000 inspection. Since this waste was stored on the site without a permit from the Agency, the respondent is in violation of Section 21(d)(1) of the Act. *See* 415 ILCS 5/21(d)(1) (2000).

The Board also finds that the respondent violated Section 812.101(a) of the Board regulations. 35 Ill. Adm. Code 812.101(a). The respondent admitted that it did not have a permit to operate a landfill at the Old Weaver Landfill site. There is no evidence that suggests that the respondent submitted to the Agency an application for a permit to develop and operate a landfill at the site. There is also no evidence or argument to suggest that the respondent could be exempt from permit requirements under Section 21(d) of the Act (415 ILCS 5/21(d) (2000)).

CONCLUSION

The Board grants complainant’s motion for summary judgment. The Board finds that the respondent violated Sections 12(a), 21(a), (d), and (p)(1) of the Act (415 ILCS 5/12(a), 21(a), (d), (p)(1) (2000)), and Section 812.101(a) of the Board regulations. 35 Ill. Adm. Code 812.101(a). However, the Board does not have sufficient information to decide the appropriate penalty in this matter. The Board directs the parties to hearing as expeditiously as practicable on the specific issue of the appropriate penalty amount, costs, and attorney’s fees in this matter.

In summary, the Board specifically orders the following:

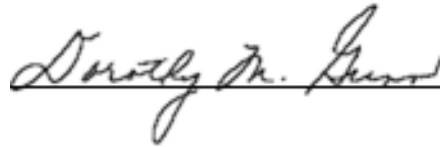
1. The Board grants complainant’s motion for summary judgment, and finds Patrick Roberts Land Trust in violation of Sections 12(a), 21(a), (d), and

(p)(1) of the Act (415 ILCS 5/12(a), 21(a), (d), (p)(1) (2000)), and Section 812.101(a) of the Board regulations. 35 Ill. Adm. Code 812.101(a).

2. The Board orders Patrick Roberts Land Trust to cease and desist from further violations of Sections 12(a), 21(a), (d), and (p)(1) of the Act (415 ILCS 5/12(a), 21(a), (d), (p)(1) (2000)), and Section 812.101(a) of the Board regulations. 35 Ill. Adm. Code 812.101(a).
3. The Board directs the parties to hearing on the specific issue of the appropriate penalty amount, costs, and attorney fees in this matter. The Board directs the parties to provide specific figures for proposed penalties and proposed justification for such figures.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on April 4, 2002, by a vote of 6-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", written over a horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board