

ILLINOIS POLLUTION CONTROL BOARD
January 19, 1995

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
v.) AC 94-8
) (Administrative Citation)
ATKINSON LANDFILL COMPANY,) (IEPA 9-94-AC)
)
Respondents.)

JAMES F. RICHARDSON, ASSISTANT COUNSEL, APPEARED ON BEHALF OF
COMPLAINANT;

BRANKO VARDIJAN, PRESIDENT, APPEARED *PRO SE*.

INTERIM OPINION AND ORDER OF THE BOARD (by G. T. Girard):

On February 10, 1994, the Illinois Environmental Protection Agency (Agency) filed an administrative citation pursuant to Section 31.1 of the Environmental Protection Act (Act). (415 ILCS 5/31.1 (1992).) The citation alleges that Atkinson Landfill Company (Atkinson) violated Sections 21(o)(5), (o)(9) and (o)(12) of the Act. On March 18, 1994, the Board received a request for review filed by Atkinson.

Hearing was held before Hearing Officer Steven Gunning on October 4, 1994 at Cambridge, Rock Island County, Illinois. No members of the general public made a statement at the hearing.

For the reasons enunciated below, the Board finds that Atkinson was in violation of Sections 21(o)(5), (o)(9) and (o)(12) of the Act.

BACKGROUND

Atkinson is the present operator of a facility located in Henry County, Illinois. The facility is operated as a sanitary landfill under an Agency operating permit No. 1980-33-OP and designated as site code NO. 0730200003. The facility is commonly known to the Agency as Henry County Landfill #2. (AC at 1.)¹

On December 15, 1993, Robert Wagner, an Agency inspector accompanied by James Jones, an Agency employee, inspected the facility. Based on the December 15, 1993 inspection, the Agency

¹ The administrative citation will be cited as "AC at ___"; the request for review will be cited as "Pet. at ___"; and the transcript will be cited as "Tr. at ___".

issued the administrative citation alleging violation of Sections 21(o)(5), (o)(9) and (o)(12) of the Act.

APPLICABLE LAW

The administrative citation issued against respondents alleges violations of subsections (5), (9) and (12) of Section 21(o) of the Act. Section 21(o) provides that no person shall conduct a sanitary landfill operation in a manner which results in:

5. uncovered refuse remaining from any previous operating day or at the conclusion of any operating day, unless authorized by permit;

* * *

9. deposition of refuse in any unpermitted portion of the landfill;

* * *

12. failure to collect and contain litter from the site by the end of each operating day.

(415 ILCS 5/21(o)(5),(9) and (12).)

The Board has adopted the definition of litter used in the Litter Control Act. (See St. Clair County v. Louis Mund, (August 22, 1991), AC 90-64). "Litter" means any discarded, used or unconsumed substance or waste and may include:

...any garbage, trash, refuse, debris...or anything else of an unsightly or unsanitary nature which has been discarded, abandoned or otherwise disposed of improperly.

(415 ILCS 105/3)

Pursuant to Section 31.1(d)(2) of the Act, the Agency bears the burden of proof in this case. (415 ILCS 5/31.) Also, pursuant to Section 31.1(d)(2) of the Act, if the Board finds that the alleged violation occurred, then the final order issued shall include a finding of violation, and shall impose the penalty of \$500 per violation as specified in subsection (b)(4) of Section 42 of the Act.

FACTS AND ARGUMENTS

The request for review of the citation filed by Atkinson states:

On December 15, 1993 IEPA personnel inspected the landfill. No mention of citations was brought to the operator's attention. With regard to the citations, uncovered refuse, deposition of refuse in an unpermitted area, failure to collect and contain litter, the Atkinson Landfill Company cites that one load of waste had already been accepted for disposal and that the items cited are wrongfully so. Additionally, the refuse in an unpermitted area is that of construction debris used for road construction during inclement weather. (Pet. at 1.)

Mr. Branko Vardijan, President of Atkinson, testified on behalf of the respondent. Mr. Vardijan testified that the weather and the poor condition of the equipment, as well as not having the proper equipment at the time of the inspection, made it difficult to operate the landfill. (Tr. at 23-25.) Mr. Vardijan also testified that "the material we are using for roads was - - in the way I'm thinking was legal. It was not really the way he said, it was garbage. It was road material." (Tr. at 25.) Mr. Vardijan also testified that the area had been cleaned up and that they were cooperating with the Agency. (Tr. at 31.) Finally, in response to cross-examination, Mr. Vardijan testified that he was not at the site on December 15, 1993. (Tr. at 27.)

Mr. Robert Wagner testified that the site had not received waste prior to his arrival on December 15 and waste was not accepted while he was present. (Tr. at 15 and 17.) Mr. Wagner did testify that the weather was bad and in fact stated that "it was a muddy mess". (Tr. at 9.) Mr. Wagner did not cite any violations in the active phase of the landfill because of the weather conditions. (*Id.*) The photos taken and marked as exhibits were taken in the area around phase 5 and the north fence line. (Tr. at 12, 14, 18, 19 and 21.) Mr. Wagner testified that he reviewed the permits issued to Atkinson and even talked to the permit section regarding permits. (Tr. at 14 and 37.) Phase 5 is not permitted to receive waste and the permits do not allow for road construction using fill material. (*Id.*) Further, the hours of operation based on the permits are 7:30 a.m. to 6:00 p.m. and Mr. Wagner arrived at 6:52 a.m. (Tr. at 7 and 15.)

DISCUSSION

The Agency must prove that the violations occurred as alleged. The Agency presented exhibits which clearly show litter in areas around the landfill. Additionally, the Board finds that Mr. Wagner's uncontroverted testimony supports the pictorial evidence (Exhibit 1) that litter had accumulated along the fence line in violation of Section 21(o)(12) of the Act. Further, the Board is persuaded that Mr. Wagner was aware as to which areas at the site were permitted and therefore, the Board finds that the Agency demonstrated that waste was deposited in unpermitted areas

of the landfill in violation of Section 21(o)(9) of the Act. Finally, the evidence clearly supports a finding that debris was left uncovered from a previous operating day in violation of Section 21(o)(5) of the Act. In addition, the Board notes that the exhibits and testimony clearly establish that the material being used for "roads" was not proper fill material and, therefore, also constitutes litter.

Having found that the violations occurred the Board also finds that the violations were not a result of uncontrollable circumstances. Although the weather at the site was inclement at the time of the inspection, the litter along the fence line appears to have been accumulating for a period of time. Further, the other violations also appear to have been ongoing. Therefore, the Board does not believe that the weather contributed to the violations occurring.

Finally, the Board notes that Atkinson maintains that the violations have been corrected. However, the Act, by its terms, does not envision a properly issued administrative citation being dismissed or mitigated because a person is cooperative or voluntarily cleans up the site. (IEPA v. Jack Wright (August 30, 1990), AC 89-227, 114 PCB 863.) Clean-up of the site is not a mitigating factor under the administrative citation program. (IEPA v. Dennis Grubaugh (October 16, 1992), AC 92-3, ___PCB___.)

CONCLUSION

The Board finds that the Agency has established that the Atkinson Landfill Company violated Sections 21(o)(5), (o)(9) and (o)(12) of the Act. The Board further finds that the violation were not a result of uncontrollable circumstances. Therefore, Atkinson Landfill Company is found in violation and must pay a civil penalty of \$500 per violation for a total penalty of \$1,500. Respondent is also required to pay hearing costs incurred by the Board and the Agency. The Clerk of the Board and the Agency will therefore be ordered to each file a statement of costs, supported by affidavit, with the Board and with service upon Respondent. Upon receipt and subsequent to appropriate review, the Board will issue a final order in which the issue of costs is addressed.

This opinion constitutes the Board's findings of fact and conclusions of law in this matter.

ORDER

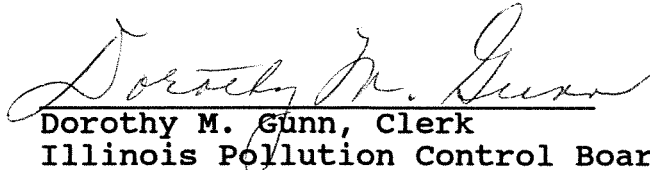
1. Respondent is hereby found to have been in violation on December 15, 1993, of 415 ILCS 5/21(o)(5), (9) and (12) (1992).

2. Within 30 days of this order, the Agency shall file a statement of its hearing costs, supported by affidavit, with the Board and with service upon respondent. Within the same 30 days, the Clerk of the Pollution Control Board shall file a statement of the Board's costs, supported by affidavit and with service upon respondent.
3. Respondent is hereby given leave to file a reply/objection to the filings as ordered in paragraph 2 of this order within 45 days 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.

Section 41 of the Environmental Protection Act (415 ILCS 5/40.1) provides for the appeal of final Board orders within 35 days of service of this decision. The Rules of the Supreme Court of Illinois establish filing requirements. (But see also, 35 Ill. Adm. Code 101.246, Motions for Reconsideration.)

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above interim opinion and order was adopted on the 19th day of January, 1995, by a vote of 6-0.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board