

ILLINOIS POLLUTION CONTROL BOARD
November 4, 1993

COUNTY OF OGLE,)
)
 Complainant,)
)
 v.) AC 91-32
) Dockets A&B
) (Administrative Citation)
 ROCHELLE DISPOSAL SERVICE,)
 INC., and CITY OF ROCHELLE,)
 ILLINOIS,)
)
 Respondents.)

ORDER OF THE BOARD (by C. A. Manning):

This matter comes before the Board on a motion for reconsideration filed pursuant to Section 41 of the Illinois Environmental Protection Act (Act) on October 18, 1993, by Rochelle Disposal Service, Inc. (Disposal) within the statutory thirty-five (35) day deadline. (415 ILCS 5/40 (1992).) Disposal is requesting the Board to reconsider the Board's decision allowing for Ogle County's hearing costs as part of the penalty in its order in AC 91-32 (Docket A & B), September 23, 1993.

On June 28, 1991 the administrative citation action was initiated by the County Ogle (County) when it filed this administrative citation pursuant to Section 31.1 of the Act. (415 ILCS 5/31.1 (1992).) The authority to issue administrative citations was delegated to the County from the Illinois Environmental Protection Agency (Agency) pursuant to Section 4(r) of the Act. (415 ILCS 5/4(r) (1992).) The Board in its order in AC 91-32, dated September 23, 1993, found Disposal in violation of Section 21(o)(1) and 21(o)(12) of the Act for refuse in standing water and failure to collect and contain litter from the site by the end of each operating day. Pursuant to Section 42 of the Act the Board assessed a fine of one thousand dollars (\$1000.00) and opened Docket B to assess hearing cost incurred by the County, if any. (415 ILCS 5/21 and 415 ILCS 5/42 (1992).)

Disposal argues that Section 42 of the Act only authorizes the Board to assess hearing costs incurred by the Board or the Agency. (415 ILCS 5/42 (1992).) In addition Disposal argues that the Board order fails to address factors of mitigation which could reduce the amount of civil penalty.

The Board has addressed the issue of whether it is appropriate to assess hearing costs incurred by the local unit of government in In the Matter of: Bi-State Disposal, Inc., (February 23, 1989), AC 88-33; County of DuPage v. E & E Hauling,

Inc., (February 8, 1990), AC 88-76 and AC 88-77; Sangamon County v. Gerald B. Miller, (June 3, 1993), AC 92-37. In each of these cases, the Board has interpreted the legislative intent and statutory phrase "hearing costs incurred by the Board and the Agency" found in Section 42(b)4 of the Act, to include the hearing costs incurred by a unit of local government which has issued an administrative citation pursuant to the Agency's delegation of its authority under Section 4(r) of the Act.

The facts in the instant case are no different than those in the above mentioned cases where the Board has decided that it is proper to award hearing costs to the local unit of government that has been delegated the authority to issue administrative citations. The County has been delegated the authority to issue administrative citations. The County issued an administrative citation and has potentially incurred costs relating to the hearing. The Board finds no reason at this time to interpret the statutory language and intent to mean otherwise.

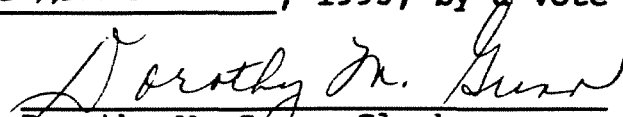
As stated above, Disposal also argues that the Board order fails to properly address mitigating factors which would reduce the one thousand dollar penalty (\$1000.00). The Board has addressed the issue of mitigating circumstances on several occasions. Specifically, the Board has found that the Act, by its terms, does not envision a properly issued administrative citation being dismissed or mitigated because a person is cooperative after its issuance or voluntarily cleans up the site. (See, IEPA v. Jack Wright, (August 30, 1990), AC 89-227, 114 PCB 863 and IEPA v. Dennis Grubaugh, (October 16, 1992), AC 92-3, 136 PCB 425.)

Accordingly, the Board accepts the October 18, 1993 motion for reconsideration but affirms its order of September 23, 1993, assessing hearing costs incurred by the County and a civil penalty of one thousand dollars (\$1000.00).

IT IS SO ORDERED.

Section 41 of the Environmental Protection Act (415 ILCS 5/41 (1992).) provides for appeal of final orders of the Board within 35 days. The rules of the Supreme Court of Illinois establish filing requirements. 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 order was adopted on the 4th day of November, 1993, by a vote of 6-0.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board