ILLINOIS POLLUTION CONTROL BOARD
October 10, 1991

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB 90-112
	)	(Enforcement)
CHICAGO HEIGHTS REFUSE DEPOT, Inc.,	)	
	)	
Respondent.	)	

PAMELA S. ZALUTSKY AND ERIC P. DUNHAM, ASSISTANTS STATE'S ATTORNEY OF COOK COUNTY, APPEARED ON BEHALF OF COMPLAINANT;

JANET L. HERMANN, OF GREENBURG & HERMANN, APPEARED ON BEHALF OF RESPONDENT.

OPINION AND ORDER OF THE BOARD (by R.C. Flemal):

This matter comes before the Board upon a complaint and amended complaint filed by the People of the State of Illinois ("State") against Chicago Heights Refuse Depot, Inc. ("the Refuse Depot"). The complaint is brought by Jack O'Malley, the State's Attorney of Cook County, on behalf of the People of the State of Illinois, and at the request of the Illinois Environmental Protection Agency, pursuant to Sections 31 and 42(e) of the Act. The complaint is a three-count complaint filed June 14, 1990. An amended five-count complaint was filed September 25, 1990.

As amended, the complaint charges the Refuse Depot with operating a landfill in violation of various provisions of the , the regulations of the Board found at 35 Ill. Adm. Code.Subtitle G, Part 807[1], and the supplemental operating permit held by the Refuse Depot (Supplement Permit No. 1986-175-SP; "supplemental permit"). The specific counts are that the Refuse Depot:

> (Count I) operated the landfill in violation of certain supplemental permit terms pertaining to groundwater monitoring, thereby also violating Section 21(d) of the

[1] Some Sections of 35 Ill. Adm. Code Part 807 were amended in R88-7, In the Matter of: Development, Operating, and Reporting Requirements for Non-Hazardous Waste Landfills, effective September 18, 1990. None of the Sections of Part 807 herein cited were so amended.

Act and Board regulations regarding compliance with supplemental permit conditions;

(Count II) operated the landfill without providing financial assurance in violation of 35 Ill. Adm. Code 807.601 and the supplemental permit at Special Condition 13;

(Count III) allowed leachate to exit the landfill in violation of Section 21(p) of the Act;

(Count IV) failed to initiate closure and post closure care after receipt of the final volume of waste as required by 35 Ill. Adm. Code 807.505 and 807.506, and Special Condition 10 and 11 of the supplemental permit; and

(Count V) failed to update the cost estimate and amount of financial assurance for the closure plan in violation of 35 Ill. Adm. Code 807.600, Section 21(d) of the Act, and Special Condition 14 of the supplemental permit.

Hearings were held on September 11, November 19 & 20, December 7, 1990, and January 29, 1991, in Chicago, Illinois. No members of the public attended. Prior to the second hearing, State filed a request for admission of fact and a request to admit genuineness of documents on September 14, 1990. The Refuse Depot filed its response to each request on October 15, 1990. The request for admission of fact and the response contain the agreed upon facts that were admitted at hearing (11/19/90 R. at 9-13). Also on October 15 the Refuse Depot filed its answer to the amended complaint. State filed its closing argument or brief on February 14, 1991, the Refuse Depot filed its reply brief on March 13, 1991, and State filed its response on March 15, 1991[2].

FACTS

Chicago Heights Refuse Depot is a landfill site that is approximately 29 acres located in Chicago Heights, Cook County,

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[2] The complaint will be cited as "Comp. at ___", the amended complaint as "Amend. Comp. at ___", the request for admission of fact and admission of fact cited jointly as "Request and Admission at ¶ ___", the State's Closing Argument as "St. Br. at ___", Refuse Depot's Closing Argument as "R.D. Br. at ___", and the State's Reply to Respondent's Closing Argument as "St. R. Br. at ___", State's exhibits as "St. Exh. ___ at ___", and Refuse Depot's exhibits as "R.D. Exh. ___ at ___". Since the transcripts were not consecutively paginated, the transcripts will by cited by date and page number thusly: 1/29/91 R. at XX.

Illinois. Chicago Heights Refuse Depot, Inc. has operated the 29-acre site, and owns 18 of those acres[3]. The remaining 11 acres are owned by the City of Chicago Heights. The president and registered agent of the Refuse Depot is Joseph LaPort (Request and Admission at ¶ 1,2)

The initial operating permit for the site was issued by the Illinois Environmental Protection Agency ("Agency") on June 12, 1978, termed "1977-21-DE". The Refuse Depot was issued a supplemental permit with conditions by the Agency on January 26, 1987, labelled "1986-175-SP" (St. Exh. 1). Included in that supplemental permit was the installation of certain monitoring wells, and financial assurance requirements (Request and Admission at ¶ 4,5; St. Exh. 1).

The Board today concludes that the Refuse Depot was in noncompliance with certain of the Board's waste regulations. The Board accordingly orders the Refuse Depot to cease and desist from violations of the Act, Board regulations, and the permit. The Board further orders the Refuse Depot to consult with the Agency regarding the installation of additional monitoring wells, and to install additional monitoring wells, as outlined in the Board's Order. The Board further orders the Refuse Depot to pay a civil penalty of $100,000, and costs, after examination of the allegations brought against the Refuse Depot, based upon the record and upon consideration of the 33(c) factors and 42(h) penalty factors, as discussed below.

NOTICE REQUIREMENT

Before proceeding to a discussion of the violations, the Board notes that the Refuse Depot raises a defense that the Agency failed to comply with the notice requirements of Section 31(d) of the Act. Briefly, Section 31(d) mandates the Agency to serve upon a complainant a written notice informing the person of the charges alleged, that the Agency intends to file a formal written complaint, and offering an opportunity to meet with Agency personnel to resolve conflicts, all prior to the filing of the complaint.

State replies that the issue of alleged non-compliance with Section 31(d) notice requirements is "jurisdictional" and as such should have been raised prior to hearing on the merits, pursuant to the Board's procedural rules at 35 Ill. Adm. Code 103.140(a). State therefore asks the Board to strike the portion of the Refuse Depot's closing argument which alleges Section 31(d) notice violations.

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[3] Whether or not Refuse Depot continues to operate the site is in issue in this matter.

State's argument as to the timeliness of the motion fails. State did not file the amended complaint until September 25, 1990, after hearing on the merits had already commenced. Hence, it would be impossible for the Refuse Depot to challenge jurisdiction on the amended complaint prior to hearing on the merits or through special appearance at hearing. The amended complaint added counts VI and V, and again alleged counts I through III[4]. The ability to challenge all aspects of the amended complaint began once the amended complaint was filed. Therefore, the Refuse Depot timely raised the issue of the failure to issue a Section 31(d) notice at hearing on the merits, since the amended complaint was filed after the hearing began.

The Board finds that the Agency failed to send notice in compliance with Section 31(d) of the Act to the Refuse Depot for counts II, III, IV, and V of the complaint. The record reveals no evidence that the violations alleged in counts II through V were ever even discussed with the Refuse Depot prior to the filing of the complaint. The record discloses that the Refuse Depot did, in fact, receive a pre-enforcement notice pursuant to Section 31(d) which pertains to count I, that the Refuse Depot participated in a pre-enforcement conference subsequent to receipt of the notice, and that only issues pertaining to violations alleged in count I were discussed (11/29/90 R. at 61-6, 12/7/90 R. at 140-4, 244-8; St. Exh. 8).

The Board finds that specific notice as delineated in Section 31(d) is required prior to filing of a complaint. Lack of such notice prior to the filing of a complaint results in defective or insufficient notice on all counts except count I. The defect in the notice does not deprive the Board of jurisdiction of the subject matter of the case. Subject matter jurisdiction is conferred upon the Board to hear enforcement cases of this type by the Act. However, the defective notice results in a lack of jurisdiction over the person of Respondent. Without personal jurisdiction, the Board, like a court, although vested with subject matter jurisdiction, is without power to impose personal obligations, such as the payment of money, or bind a particular person to its judgment, except for count I (See, generally, In re Marriage of Hostetler, 463 N.E.2d 955, 124 Ill. App. 3d 31 (1st Dist. 1984); In re W.D., 551 N.E.2d 357, 194 Ill. App. 3d 686 (1st Dist. 1990)). Since the Board has found the Refuse Depot's arguments were timely raised, and that the notice is defective on all counts except for count I, the Board will only address those violations alleged in count I.

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[4] Count I and the prayer for relief were also changed in the amended complaint.

DISCUSSION OF VIOLATIONS

The Act authorizes the Board to adopt and amend rules governing the management of solid waste (Ill. Rev. Stat. 1989 ch. 111 1/2, par. 1022). This the Board has done, and the resulting body of regulations resides at 35 Ill. Adm. Code.Subtitle G. The Act further provides that:

> No person shall:
>
> d. Conduct any waste-storage, waste-treatment, or waste disposal operation:
>
> 1. Without a permit granted by the Agency or in violation of any conditions imposed by such permit, including periodic reports and full access to adequate records and the inspection of facilities, as may be necessary to assure compliance with this Act and with regulations and standards adopted thereunder...; or, (emphasis added)
>
> 2. In violation of any regulations or standards adopted by the Board under this Act.
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> Ill. Rev. Stat. 1989, ch. 111 1/2, par. 1021(d) (emphasis added)

It is also provided at 35 Ill. Adm. Code.Subtitle G that:

> Section 807.301 Prohibition
>
> No person shall cause or allow the operation of a sanitary landfill unless each requirement of this subpart is performed.
>
> Section 807.302 Compliance with Permit
>
> All conditions and provisions of each permit shall be complied with.

Violation of these provisions is alleged as part of count I of the amended complaint (Amend. Comp. at 3-4). The Refuse Depot has violated these provisions if it has not complied with its permit conditions.

Count I

State alleges the Refuse Depot failed to operate its landfill in accordance with certain supplemental permit conditions pertaining to groundwater monitoring. Specifically,

State alleges that the Refuse Depot failed to (Amend Comp. at 4-5):

> (1) Maintain groundwater wells so that water samples could be obtained as required by the supplemental permit (condition 1(g));
>
> (2) Submit groundwater analysis reports to the Agency as required by the supplemental permit (Attachment A; Section 807.317);
>
> (3) Establish initial groundwater quality by determining and reporting values for certain parameters quarterly during the first year beginning July 15, 1987 for wells G103, G104, G105, and G106, as required by the supplemental permit (Attachment A, condition 2);
>
> (4) Perform quarterly monitoring at well G102 as required by the supplemental permit (Attachment A, condition 3); and
>
> (5) Perform annual monitoring for well G102 as required by the supplemental permit (Attachment A, condition 4).

Condition 1 of Attachment A of the supplemental permit requires that six points be used in the water monitoring program for the Refuse Depot's facility; the six points are referred to as G101, G102, G103, G104, G105, and G106. It is not at issue that the six monitoring points have been occupied by the Refuse Depot. However, the Refuse Depot asserts that on each attempted sampling occasion the well at each of the six monitoring points was dry. The Refuse Depot seemingly contends that this condition was sufficient to satisfy its groundwater monitoring requirements. The Board disagrees.

Groundwater monitoring and reporting is among the most essential obligations required of operators of facilities such as the Refuse Depot's. This is clear in the law. This is clear in the Refuse Depot's supplemental permit[5]. Yet the bare fact of the matter is that the Refuse Depot over the several years at issue neither produced nor reported one single groundwater monitoring result.

Much of the Refuse Depot's defense (1/29/91 R. at 30-2, 126; R.D. Br. at 6, 10) focuses on the allegation regarding Special Condition 1(g), and further on the meaning of the word "maintained" as used in that condition:

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[5] The permit is nine pages long; groundwater monitoring and reporting is of issue on every page, and is the sole subject on four of the nine pages.

> All monitoring points shall be maintained such that a sample may be obtained. (St. Exh. 1)

The Refuse Depot contends that by keeping the apparatus of each of the six monitoring points in suitable condition, it "maintained" the monitoring points. The Board finds little that is pertinent in this argument. It is not contended that the Refuse Depot was a poor housekeeper of the monitoring wells.

Moreover, it cannot be accepted, as the Refuse Depot would seemingly have it, that physical maintenance of the monitoring point was sufficient discharge of the Refuse Depot's groundwater monitoring obligations. Even in the narrow context of Special Condition 1(g) it is clear that the "sample" referred to is unambiguously a groundwater sample. A groundwater sample cannot be obtained from the "air". It must be taken from the groundwater, and for this to be possible the well must extend down to where groundwater occurs[6]; none of the Refuse Depot's wells had this most elementary property. The Refuse Depot's wells are, in fact, thereby not even groundwater monitoring points, but rather nothing more than irrelevant (however well-maintained) holes-in-the-ground.

Even assuming arguendo that there is some merit in the Refuse Depot's position that Special Condition 1(g) requires only physical maintenance of the "monitoring points", the serious allegations regarding failure to produce and report the groundwater sample results required under the supplemental permit remain.

Here, the Refuse Depot's defense is that once its initial effort at providing monitoring samples failed (due to the dry wells), it was not required by the supplemental permit, nor by the Agency, to do anything further.

This reasoning, too, is unacceptable. There is nothing stated or implied in the supplemental permit or the Board's regulations that inability (or failure) to comply with one permit condition absolves the permittee from compliance with other conditions.

At the preenforcement conference held April 8, 1988, the Agency discussed the installation of additional wells (St. Exh. 38; 12/7/90 R. at 143-4). The Refuse Depot alleges that the Agency wanted additional wells installed at the Refuse Depot site to monitor for contaminants the Agency believed to be coming from an adjacent site, Fitz-Mar (12/7/90 R. at 140-3; see also St. Exh. 30). The Board finds this, too, is without merit since whatever problem may or may not be associated with the Fitz-Mar

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[6] I.e., below the watertable.

site, the fact remains that the Refuse Depot's supplemental permit contains groundwater monitoring requirements, and the Refuse Depot has not submitted groundwater samples for the Refuse Depot site.

The Board also finds that although some reports were submitted by the Refuse Depot, the reports did not contain the water monitoring data and groundwater analysis required by Attachment A of the permit and Section 807.317 of the Board's regulations.

Also we note, and reject, the implication that responsibility for the failure of Refuse Depot's wells to produce water is to be laid upon the Agency. The Agency's authorization of the six monitoring points was in expressed understanding that each of the six wells would be finished and screened below the watertable[7]. The wells were not so finished and screened; neither is there indication in the record that the Agency was thereupon notified of this condition[8].

The Refuse Depot has further argued that because of the natural impermeability of the clay and the manner of construction of the landfill no water is passing through the landfill, and hence no contamination is occurring (12/7/90 R. at 16-17). There are no facts in the record to support this argument. The facts which would show that contamination is occurring or is not occurring are absent due to the Refuse Depot's failure to install monitoring wells which would collect water samples. Nothing in this record tells the Board what is happening below the landfill, or below the bedrock as a direct impact of this landfill. Until proper monitoring is done, no one will ever know.

For count I, the Board finds the Refuse Depot violated five different supplemental permit requirements, provisions of the Act, and Board regulations, as listed above on pages four and five of this Opinion. The Board finds that these violations occurred from July 15, 1987, the first date samples were due pursuant to Attachment A Condition 2, and continued through the quarterly reporting cycle needed to establish initial groundwater quality. Violations also occurred from October 15, 1987, the first date samples were due pursuant to Attachment A Conditions 3 and 4, and continued through each additional quarterly and annual

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[7] "Each monitoring well will be screened from the water table to 5 feet below the groundwater table . . ." (St. Exh. 27, p.2 - letter from Collin W. Gray to Agency).

[8] Pursuant to Condition 2 of the permit: "Permittee shall notify the Agency of any changes from the information submitted to the Agency in its application for a Development and Operating permit for this site" (St. Exh. 1, p. 2).

reporting cycle, until the present. Violations of the Act and Board regulations occurred beginning July 15, 1987, the date any requirements were due that were not met.

The Board must next consider the appropriate remedy for these violations.

REMEDY

In addition to requesting that the Board order the Refuse Depot to cease and desist from further violations of the Act and regulations as noted in the complaint and amended complaint (and to comply with the provisions of the supplemental permit, provisions of the Act and Board regulations), State also seeks the Board order the Refuse Depot to:

> install deeper monitoring wells which yield representative groundwater samples and accurately assess the impact on the groundwater for the next 15 years. (St. Br. at 16)

State also requests that the Board require Mr. LaPort, as owner and operator of the site, to attend "a seminar on groundwater protection" (St. Br. at 16). State further requests that the Board assess a maximum civil penalty of $50,000 for each violation and $10,000 per day as a continuing violation from January 26, 1987, the date of the supplemental permit through January 1991, as well as costs, reasonable attorneys fees, and fees for expert witnesses and consultants for repeated violation of the Act as provided under Section 42 of the Act (St. Br. at 16-17).

Any relief the Board grants in this matter must comport with the directives contained in the Act. The Act outlines certain directives for a Board decision and further authorizes the Board to issue cease and desist orders, and impose civil penalties:

> a) . . . the Board shall issue and enter such final order, or make such final determination, as it shall deem appropriate under the circumstances . . .
>
> b) Such order may include a direction to cease and desist from violations of the Act or of the Board's rules and regulations or of any permit or term or condition thereof, and/or the imposition by the Board of civil penalties in accord with Section 42 of the Act. . . . (Section 33(a) and (b))

> Any person that violates any provision of the Act or any regulation adopted by the Board or any permit or term or condition thereof, . . . shall be liable to a civil penalty of not to exceed $50,000 for the violation and an additional civil penalty not to exceed $10,000 for each day during which the violation continues (Section 42(a) of the Act[9]).

Since the record discloses violations from July 15, 1987 to the present, the maximum penalty which could be imposed would be over $100 million[10].

In addition, the Act contains certain factors which the Board must consider in determining an appropriate remedy:

> c) In making its orders and determinations, the Board shall take into consideration all the facts and circumstances bearing upon the reasonableness of the emissions, discharges, or deposits involved including, but not limited to:
>
> 1. the character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the people;
>
> 2. the social and economic value of the pollution source;
>
> 3. the suitability or unsuitability of the pollution source to the area in which it is located, including the question of priority of location involved;
>
> 4. the technical practibility and economic reasonableness of reducing or eliminating the emissions, discharges or deposits resulting from such pollution source; and

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[9] The maximum penalties in Section 42(a) were increased to these amounts by P.A. 86-1014, effective July 1, 1990. Until then the maximum penalties are $10,000 per violation with $1,000 per day of violation.

[10] Based on a calculation of $50,000 per each of eight violations, and $10,000 per day for each day each of the violations continued to the present (a period of over 4 years).

5. any subsequent compliance.
(Section 33(c) of the Act)[11]

For Section 33(c)(1), the Board finds that the failure to adequately monitor groundwater for releases from the Refuse Depot facility in excess of four years is a substantial interference with the protection of the health, general welfare and physical property of the people. Any opportunity afforded through the permitting process to prevent or adequately and timely address any releases continues to be lost the longer no monitoring takes place at the site.

For Section 33(c)(2), the Board accepts that the Refuse Depot has social and economic value as a landfill. However, any value is diminished by the fact that continuing violations exist.

For Section 33(c)(3), there is no evidence in the record that the site is not suitably located. A permit was issued for the site at its present location. Priority of location is not an issue.

As regards Section 33(c)(4), the record indicates that in order to monitor the groundwater it would be necessary to place new wells in the aquifer and to collect actual groundwater samples. There is no indication that this would be technically impracticable or economically unreasonable.

As regards Section 33(c)(5), there has been no subsequent compliance with the groundwater monitoring requirements.

Upon review of all the facts and circumstances of this case, and the Section 33(c) factors, the Board finds that a penalty should be imposed upon the Refuse Depot. The Board now turns to Section 42 for the determination of an appropriate civil penalty. Section 42(h), effective September 7, 1990 (P.A. 86-1363)[12],

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[11] Although Section 33(c) applies by its terms to the "reasonableness of the emissions, discharges, or deposits involved", and various other provisions more appropriate to pollution sources, it still provides some guidance in such a case as this one. This is a case involving violations of a body of regulations and permitting system intended to entirely prevent the release of pollutants into the environment.

[12] The Board considered applying the Section 42(h) factors in those cases where hearing was held following the effective date of Section 42(h). The Board chose to apply Section 42(h), a procedural statute, retroactively in People v. Sure-Tan, Inc., PCB 90-62, April 11, 1991. Hearing in this matter was held after the

authorizes the Board to consider matters of record in mitigation of penalty, including the following factors:

1. the duration and gravity of the violation;

2. the presence or absence of due diligence on the part of the violator in attempting to comply with the requirements of this Act and regulations thereunder or to secure relief therefrom as provided by this Act;

3. any economic benefits accrued by the violator because of delay in compliance with requirements;

4. the amount of monetary penalty which will serve to deter further violations by the violator and to otherwise aid in enhancing voluntary compliance with this Act by the violator and other persons similarly subject to the Act; and

5. the number, proximity in time, and gravity of previously adjudicated violations of this Act by the violator.

The permit, Act, and regulation violations by the Refuse Depot have continued since July 15, 1987, the due date for the first set of groundwater samples, which is a time period of over four years. As stated above regarding Section 33(c)(1), any releases that may be occurring at the site would be continuing without abatement. Therefore, the violation is grave. (Section 42(h)(1)).

The Refuse Depot has not exhibited due diligence in attempting to comply with the requirements of the Act, Board regulations, and its supplemental permit. The Refuse Depot has steadfastly refused to submit groundwater samples as required by the supplemental permit and its monitoring requirements for closure. (Section 42(h)(2)).

The Refuse Depot has saved time and money in not submitting groundwater samples as required. The Refuse Depot may have also saved significant time and funds should a release have occurred and clean up been required during the time that results were not reported. The Refuse Depot further saved time and funds by delay in the filing of documents required by the regulations and supplemental permit. (Section 42(h)(3)).

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effective date of Section 42(h).

The Board finds that imposition of a penalty will serve to deter further violation by the violator and to otherwise aid in enhancing voluntary compliance with the Act by the violator and others similarly subject to the Act. (Section 42(h)(4)). The record does not show any previously adjudicated violations by the Refuse Depot. (Section 42(h)(5)).

Considering the facts and circumstances of this case, and after weighing both the Section 33(c) and 42(h) factors, the Board finds that a penalty of $100,000 for violation of the Act, Board regulations and supplemental permit requirements outlined above, should be imposed against the Refuse Depot. The Board notes that this is much less than the maximum penalty allowable under the Act. In imposing this penalty, the Board especially notes that its discussion and application of the statutory factors reveals few mitigating factors, and that the facts weigh in favor of imposition of a higher penalty (See especially discussion of 33(c) (1), (2), (4), (5), and 42(h) (1), (2), (3), and (4).

The Board declines to order Mr. LaPort to take a "groundwater seminar". There is no evidence that this would aid the enforcement of the Act and Board regulations, nor was information presented on which particular seminar would be required and why.

The Board will order the Refuse Depot to cease and desist from further violations of the Act, Board regulations, and permit requirements. In addition, the Board will order the Refuse Depot to install additional monitoring wells which yield representative groundwater samples in consultation with the Agency. This groundwater monitoring shall continue for the period of time consistent with the Act, all permits, applicable Board regulations, and also in consultation with the Agency.

According to Section 42(f), the Board may award:

> costs and reasonable attorney's fees, including the reasonable costs of expert witnesses and consultants, to the State's Attorney or the Attorney General in a case where he has prevailed against a person who has committed a wilful, knowing or repeated violation of the Act.

State requests fees and costs be awarded under Section 42(f) based on allegations that the Refuse Depot committed repeated violations of the Act (St. Br. at 17). The Board finds that the Refuse Depot has not committed repeated violations of the Act. As noted above regarding Section 42(h)(5), the record does not disclose any prior, similar findings of violation against the Refuse Depot. As discussed above, the record does show a continuing violation. However, a repeated violation is not

synonymous with a continuing violation. Therefore, the Board will not assess costs against the Respondent in this matter.

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

ORDER

1. The Respondent, Chicago Heights Refuse Depot, Inc., has violated Section 21(d) of the Illinois Environmental Protection Act; 35 Ill. Adm. Code 807.317, 807.301 and 807.302 of the Board's regulations; and condition 1(g) of the supplemental permit; and conditions 2, 3, and 4 of Attachment A of the supplemental permit.

2. Within 30 days of the date of this Order the Respondent shall, by certified check or money order payable to the State of Illinois, designated to the Environmental Trust Fund,, pay the penalty of $100,000, which is to be sent by First Class Mail to:

   Illinois Environmental Protection Agency
   Fiscal Services Division
   2200 Churchill Road
   P.O. Box 19276
   Springfield, IL 62794-9276

   The Respondent shall also place its Federal Employer Identification Number upon the certified check or money order.

   Any such penalty not paid within the time prescribed shall incur interest at the rate set forth in subsection (a) of Section 1003 of the Illinois Income Tax Act, (Ill. Rev. Stat. 1990 Supp., ch. 120, par. 10-1003), as now or hereafter amended, from the date payment is due until the date payment is received. Interest shall not accrue during the pendency of an appeal during which payment of the penalty has been stayed.

3. Chicago Heights Refuse Depot, Inc., is hereby ordered to cease and desist from all violations of the Illinois Environmental Protection Act, Board regulations, and the terms and conditions of its supplemental permit issued January 26, 1987.

4. Chicago Heights Refuse Depot, Inc., is hereby ordered to improve the existing wells or install additional monitoring wells such that the wells will yield representative groundwater samples. Respondent shall

continue groundwater monitoring and reporting of results of such monitoring to the Agency for a period of time and in a form consistent with the requirements of the Environmental Protection Act, all applicable permits, and all applicable Board regulations. Such improvement or installation of wells, monitoring, and reporting shall be performed in consultation with the Illinois Environmental Protection Agency.

Section 41 of the Environmental Protection Act, Ill. Rev. Stat. 1989 ch. 111 1/2 par. 1041, provides for appeal of final Orders of the Board within 35 days. The Rules of the Supreme Court of Illinois establish filing requirements.

IT IS SO ORDERED.

Board Member B. Forcade concurred. Board Member J. D. Dumelle dissented.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 16th day of October, 1991, by a vote of 6-0.

Dorothy M. Gunn

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board