

ILLINOIS POLLUTION CONTROL BOARD
September 22, 1988

IN THE MATTER OF:)
)
CHICAGO HEIGHTS REFUSE DEPOT,) AC 87-47
) (IEPA No. 8383-AC)
 Respondent.) Docket A
)

MR. WILLIAM SELTZER, ESQ., APPEARED ON BEHALF OF THE PETITIONER,
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

MS. CHERI NOVAK, ESQ., APPEARED ON BEHALF OF THE RESPONDENT,
CHICAGO HEIGHTS REFUSE DEPOT, INC.

OPINION AND ORDER OF THE BOARD (by M. Nardulli):

This matter comes before the Board upon a May 15, 1987 filing of an Administrative Citation by the Illinois Environmental Protection Agency (hereinafter "Agency") and a June 15, 1987 filing of a Petition for Review filed by the Respondent. Both filings are pursuant to Ill. Rev. Stat. 1986 Supp. ch. 111 1/2, par. 1031.1, the Illinois Environmental Protection Act (hereinafter "Act").

Hearing was held on January 25, 1988 in Chicago. No members of the public were present. Gino Bruni, an inspector for the Agency, testified for the Agency and Joseph LaPort, the owner and operator of Chicago Heights Depot, testified on behalf of the Respondent. On April 22, 1988, the Agency filed a Brief in Place of Closing Argument. No Response Brief has been filed by the Respondent.

The Board finds that the Agency has shown that the Respondent was in violation of Ill. Rev. Stat. 1986 Supp.; ch. 111 1/2 par., 1021(p)(5) on both March 24, 1987 and April 13, 1987. The Respondent was unpersuasive in attempting to prove that the Agency incorrectly identified the photographed materials as uncovered refuse from a previous day's operation. Further, the Respondent failed to make any argument of uncontrolled circumstances that resulted in the violations. Therefore, the Board finds that the Agency's determination of violations of the requirement to supply daily cover was correct and hereby upholds the determination of violations and the penalty imposed.

BACKGROUND

Chicago Heights Depot, Inc. operates a sanitary landfill under Agency Permit no. 1977-21-OP. On March 24, 1987 and on April 13, 1987, Mr. Bruni inspected the landfill site. On the basis of the inspections, the Agency determined that on both days the Respondent had operated the site in violation of paragraph 1021(p)(5) of the Act to wit:

(p) No person shall conduct a sanitary landfill operation which is required to have a permit under subsection (d) of this Section, in manner which results in any of the following conditions:

(5) uncovered refuse remaining from any previous operating day, unless authorized by permit

Ill. Rev. Stat. 1986 Supp., Ch.
111 1/2 par. 1021 (p) (5).

Accordingly, the Agency on March 25, 1987, issued an Administrative Citation to Respondent in which a civil penalty of \$500 was assessed for each of the two violations, pursuant to Section 42(b)(4) of the Act.

Respondent now contests before this Board the Agency's determination of the two violations. Alternatively, if the Agency's determinations of violation are upheld, the violations could be found to have resulted from uncontrollable circumstances, thus invoking the "uncontrollable circumstances" provision of the Act:

If the Board finds that the person appealing the citation has shown that the violation resulted from uncontrollable circumstances, the Board shall adopt a final order which makes no finding of violation and which imposes no penalty.

Ill. Rev. Stat. 1986 Supp., ch.
111 1/2, par. 1031.1(d)(2).

DETERMINATION OF VIOLATION

In support of its determination that Chicago Heights Depot, Inc. failed to provide daily cover, the Agency submitted photographs (Ex. 2, 3, 5 and 6) taken by Mr. Bruni during his site inspection on March 24 and April 13 of 1987. Mr. Bruni

testified that both inspections were held early in the morning (R. at 8, 21) and that the refuse in the photographs was refuse from the prior day's activities. Mr. Bruni testified as to how he determined that the exposed refuse was not refuse which had been deposited on the day of the inspection (R. at 42). Further, Mr. Bruni testified that on the occasion of both visits, the on-site operator told him that the exposed refuse was from a previous operating day (R. at 10, 28).

The case presented by the Agency was countered by the testimony of Mr. LaPort testifying on behalf of the Chicago Heights Depot, Inc. Mr. LaPort testified that the materials that Mr. Bruni had identified as uncovered refuse from previous days were actually part of a sidewall that had collapsed (R. at 69). Mr. LaPort admitted that the collapsed sidewall contained refuse that was not covered at the end of the previous day (R. at 73). Mr. LaPort also testified that it is the practice at Chicago Heights Depot, Inc. to supply cover to all refuse at the end of the day and that he routinely inspects the site to ensure that proper cover is maintained (R. at 57 to 60). Mr. LaPort further testified that he was present on March 24, 1987 and that he did not see any exposed refuse at the time of Mr. Bruni's inspection.

Based on the evidence and testimony presented by the Agency, the Board finds that the Agency has met its burden of proving that the violations did occur. The photographic evidence shows what appears to be uncovered refuse in the yard and Mr. Bruni's testimony indicates that it was from a previous day's activity. Even if the refuse was the result of the collapse of the sidewall, as Mr. LaPort testified, it would still be subject to the daily cover requirements.

Further, the Respondent has failed to show that the collapse of the sidewall represented an uncontrollable circumstance that would excuse this failure to apply daily cover. Once it has been concluded that daily cover was not correctly accomplished, it is clearly the Respondent's burden to prove that they were not able to cover because of a circumstance beyond their control. The Respondents failed to meet this burden and the Board is not convinced that the collapse of the sidewall was beyond the Respondent's control or that it made it impossible to apply daily cover.

PENALTIES

Penalties in Administrative Citation actions of the type here brought are prescribed by Section 42(b)(4) of the Act, to wit:

In an administrative citation action under Section 31.1 of this Act, any person found to have violated any provisions of subsection (p)

of Section 21 of this Act shall pay civil penalty of \$500 for each violation of each such provision, plus any hearing costs incurred by the Board and the Environmental Protection Agency. Such penalties shall be made payable to the Environmental Protection Trust Fund to be used in accordance with the provisions of "an act creating the Environmental Protection Trust Fund", approved September 22, 1979.

Respondent will therefore be ordered to pay a civil penalty of \$1,000, based on the two violations as herein found. For purposes of review, today's action (Docket A) constitutes the Board's final action on the matter of the civil penalty.

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 separate final order in which the issue of costs is addressed. Additionally, Docket B will be opened to treat all matters pertinent to the issue of costs.

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

ORDER

- 1) Respondent is hereby found in violation, as alleged of Ill. Rev. Stat. 1986 Supp., Ch. 111 1/2, par. 1021(p)(5).
- 2) Within 45 days of this Order of September 22, 1988, Respondent shall, by certified check or money order, pay a civil penalty in the amount of \$1,000 payable to the Environmental Protection Trust Fund. Such payment shall be sent to:

Illinois Environmental Protection Agency
Fiscal Service Division
2200 Churchill Road
Springfield, IL 62706

- 3) Docket A in this matter is hereby closed.
- 4) Within 30 days of this Order of September 22, 1988, the Illinois Environmental Protection Agency shall file a statement of its hearings costs, supported by

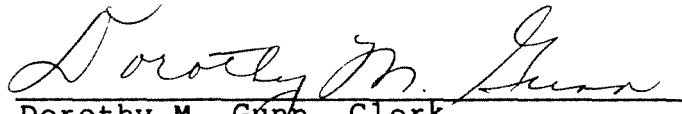
affidavit, with the Board and with service upon Respondent. Within the same 30 days, the Clerk of the Pollution Control Board shall file a statement of the Board's costs, supported by affidavit and with service upon Respondent. Such filings shall be entered in Docket B of this matter.

- 5) Respondent is hereby given leave to file a reply/objection to the filings as ordered in 4) within 45 days of this Order of September 22, 1988.

Section 41 of the Environmental Protection Act, Ill. Rev. Stat. 1985 ch. 111 $\frac{1}{2}$ par. 1041, provides for appeal of Final Orders of the Board within 35 days of the issuance of Final Orders. The Rules of the Supreme Court of Illinois establish filing requirements.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 22nd day of September, 1988 by a vote of 7-0.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board