

ILLINOIS POLLUTION CONTROL BOARD  
September 22, 1988

IN THE MATTER OF: )  
 )  
VILLAGE OF RANTOUL, ) AC 87-100  
 ) IEPA No. 8577-AC  
Respondent. )

OPINION AND ORDER OF THE BOARD (by J. Anderson):

This matter comes before the Board on a Petition for Review filed on October 15, 1987 by the Village of Rantoul (Rantoul) to contest an Administrative Citation (Citation). The citation was served on Rantoul on September 14, 1987 by the Illinois Environmental Protection Agency (Agency). Hearing was held on April 20, 1988 and post-hearing briefs were filed by the Agency on June 23, 1988, and by Rantoul on July 20, 1988.

The Administrative Citation was issued pursuant to Section 31.1(b) of the Environmental Protection Act (Act) and was based on an alleged violation of Section 21(p)(5) of the Act. Section 21(p)(5) states as follows:

No person shall:

- p) Conduct a sanitary landfill operation which is required to have a permit under subsection (d) of this Section, in a manner which results in any of the following conditions:
- 5) uncovered refuse remaining from any previous operating day or at the conclusion of any operating day, unless authorized by permit;

The Agency inspector more specifically testified at hearing that:

"The cover requirement is at the end of each operating day, six inches of cover over refuse, and that is the violation that I alleged in my report". (R.23)

The special procedures for notice and conduct of hearing, and Board determinations concerning appeals of Administrative Citations, are contained in Section 31.1(d)(2) of the Act as follows:

"If a petition for review is filed before the Board to contest an administrative citation issued under subsection (b) of this Section, the Agency or unit of local government shall

appear as a complainant at a hearing before the Board to be conducted pursuant to Section 32 of this Act at a time not less than 21 days after notice of such hearing has been sent by the Board to the Agency or unit of local government and the person named in the citation. In such hearings, the burden of proof shall be on the Agency or unit of local government. If, based on the record, the Board finds that the alleged violation occurred, it shall adopt a final order which shall include the administrative citation and findings of violation as alleged in the citation, and shall impose the penalty specified in subdivision (b)(4) of Section 42. However, 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.\*

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\* An issue arose about an Agency "Compliance Inquiry Letter". In its Petition for Review, Rantoul stated:

"The Village is particularly disturbed by the fact that it received a certified letter, called a Compliance Inquiry Letter dated August 31, 1987, on or about September 1, 1987, from Glenn D. Savage, Manager, Field Operations Section, Illinois Environmental Protection Agency, and before the fifteen days were up for our response, this action was initiated on September 11, 1987" (copies attached). (Rantoul Pet. p. 2)

Rantoul's Mayor had responded to the Agency's Compliance Inquiry letter by letter dated September 15, 1987. However, as noted above, the Agency did not wait for a timely response before initiating the citation.

The Board appreciates Rantoul's distress and itself is uncertain about what relationship, if any, the Compliance Inquiry letter has to the administrative citation process. Section 31(d) of the Act requires the Agency to notify a person of its intent to file a formal complaint, including the charges alleged, and to offer the person an opportunity to meet within 30 days with Agency personnel. However, the Administrative Citation procedures in Section 31.1 of the Act contain no provision for Agency/respondent interaction prior to filing an administrative citation. Additionally, the Agency's "Compliance Inquiry Letter" (Petition, Attach.) sent to Rantoul makes no mention of intent to file, or any other reference to, an administrative citation.

Facts Presented

Rantoul has owned and operated a permitted landfill located northwest of Rantoul in Champaign County for several years.

It is not disputed that there was some uncovered refuse before the landfill opened at 6:00 on the morning of July 30, 1987. It is also not disputed that cover had been placed on the refuse the day before, July 29, 1987. What is disputed is whether six inches cover had been placed and whether or not the refuse found exposed resulted from uncontrollable circumstances, i.e. a five inch rainfall that started at about 3:30 a.m. on the morning of July 30, 1987.

The Agency inspection on the morning of July 30, 1987 was not routine. The day before, the Agency had sent an inspector from its Division of Water Pollution Control in Champaign--because it had no Division of Land Pollution inspectors stationed in Champaign--to check on a complaint of a "white material" being discharged into a stream to the west of the landfill. (R.14). The next day, an inspector from the Agency's Division of Land Pollution Control drove to the landfill site from Springfield. However, the Agency did not assert that the discharge came from the landfill nor did the Agency rebut testimony of the landfill operator that he had been told about the inspection only by Rantoul's comptroller and that the discharge had nothing to do with the landfill. Also, the Agency never filed any complaints concerning the discharge. (R.77). Since the Agency did not testify or present evidence from the July 29, 1988 visit concerning any daily cover issue, and, since both parties agreed that no rain fell on July 29 when cover was applied, the July 29 Agency inspection is irrelevant to the issues raised in this proceeding (R.19,20).

Mr. William Zierath, the Agency inspector who visited the site on the morning of July 30, 1988, testified as follows: He was at the site from about 5:45 a.m. until 7:45 a.m. leaving by 8:00 a.m.; he took photos at the start of his inspection at 6:10 a.m. (R.34); northwest of the equipment shed there was "a fairly extensive area with scattered refuse apparent through cover material; it was apparent that some cover material had been applied to the refuse because there were no large expanses of totally uncovered refuse with no dirt". (R.22); if six inches of cover had been applied, so much refuse would not have been exposed, both in amount and degree of protrusion, some protruding as much as one foot (R.28); it had rained from "fairly hard to fairly gentle" during the entire time of his inspection, and was still raining when he left (R.27,34); the erosion patterns, particularly the absence of gully-like channels, indicate that the amount of refuse exposed was not because of erosion caused by the rain, but, rather, lack of sufficient daily cover, although some cover might have settled in the refuse (R.31,43). Mr.

Zierath noted that tracks from the bulldozer were still visible in one picture northeast from the east area of the site (Roll #124, #13), (R.46). Mr. Zierath also testified that when he reached Champaign at about 5:00 a.m., 25 miles from Rantoul it started raining quite hard and that the same stream west of the landfill involving the day earlier discharge complaint had overrun the road, forcing him to take a back route to get to the landfill. (R.37,40).

Finally, Mr. Zierath, who had inspected about 500 non-hazardous landfills in the six years in his present position, testified that in his experience:

"In as much as approximately 1 1/2 feet of soil would have had to erode away and since the only precipitation that would have eroded the cover material had to have fallen on that area with the exposed refuse, it isn't at the bottom of a hill or anything and there isn't water running onto that from any place else, no, it could not have eroded a foot and a half of soil away, that amount of rain." (R.35)

The Agency submitted a number of photographs of the site, both panoramic and of specific objects. (Agency Group Ex. #1). The Agency also introduced a U.S. Weather Bureau report from a station at the Rantoul Power Plant, about one and 1/2 miles from the landfill (R.54). (Agency Group Ex. #2). The report indicates that the rain, totalling 5.05 inches began about 2:30 a.m. on July 30, and ended about 7:30, and that no rain had fallen the prior two days.

Mr. Zierath's inspection report contained a notation that he had been told the rain started about 4:00 a.m., that by 7:30 a.m. at least 4 inches had fallen, that refuse was exposed over an area of 75 x 85 yds., and that erosion exposed about 2 x 10 yds. in the western part of landfill.

Rantoul's Mayor, Katy Podagrosi, testified that: at 5:00 a.m. on July 30, her husband found an unprecedented amount, four feet, of water in their basement; she patrolled the area with the police chief starting at 6:00 a.m.; people in town were out in boats; crossties that "people had used in their flower beds had floated out into the street", (R.53); after 6:00 a.m. not enough rain was falling to "pay any attention to" (R.53); the flooding occurred prior to 6:00 a.m.; and, while she patrolled the streets, she did not go check the landfill.(R.49-53). The Rantoul Press also reported about flash floods in the area (Village Ex.).

Rantoul's Superintendent of the Landfill Department, Mr. Albert Warner, who has held that position for 20 years, and who

takes an active role in the operation of the landfill, testified that he and his equipment operators had been closely inspecting daily cover "every day or every few days" because of trouble with the Agency over this issue.(R.57-58). On the day before the rain, July 29, 1987, he was present when covering started at about 12:30 or 1:00 p.m. but had to leave about 2:30. The cover operation, routinely, was not completed until about 4:00 p.m., an hour after the site closed.(R.74,75). He firmly believed that sufficient cover was applied. (R.57,69)

Mr. Warner further testified that: the active area at issue was about 50' by 75' wide and 150' deep, and was on a 45 degree slope; the active area was below a large, more flat, area about 400 feet by 300 feet that, because of its contour, would have sent about 35% of its water flowing over the active area; the active area was above the original ground level, was 47' to 50' above the bottom of the original trench and thus above 10 to 15 layers of refuse and cover placed earlier; and the tractor marks noted by the inspector were made while the tractor was travelling from the shed to the active area. (R.58,60,67,68,71)

Mr. Warner testified also that in any operating day refuse is compacted by a crawler type tractor, but the cover dirt is put on loose; compaction of the dirt occurs on the next day when succeeding layers of refuse are placed on top; and that loose dirt will erode more quickly. (R.66,67).

On the morning of the rain, Mr. Warner testified that he awakened at 3:00 a.m. and drove through heavy rainfall and reached the landfill at 5:55 a.m. The rain gauge at the landfill had "a good four inches" at 6:00 and by 8:00 or 8:30 it had run over its five inch capacity (R.64,65). After the Agency inspector left, Mr. Warner personally looked at the problem area. Mr. Warner saw a large amount of topsoil, especially fine dirt, that had eroded to the toe of the slope. He stated that at the toe of the slope "we would have like a trench or a place for water to run, and they would come down the slope and go into like a flattened area or waterway type of thing." (R.65,66). Mr. Warner stated that in his 20 years as superintendent there had been maybe "three or four of these storms" and, with dry soils, there is high erosion, and the refuse will carry. In addition, there is some settlement. (R.63,64)

Finally, Mr. Joe Pisula, a member of an engineering firm that does consulting work for Rantoul, testified that a rainfall of at least four inches in a two-and one-half to three hour period was over and above a 100 year storm, based on Illinois State Water Survey records and commonly accepted engineering practices. He stated that culverts and storm sewers are designed for 1.9 inches in one hour and that regarding the four inches

falling prior to the inspection, "It is an anomaly, obviously". (R.80).

Board Discussion:

The Board notes that Section 21(p)(5) of the Act does not expressly articulate the six-inch daily cover requirement at issue here; the daily cover requirement of six inches is found in the Board's regulations at 35 Ill. Adm. Code 807.305.

Both the statute and the regulation require the refuse to be covered daily unless otherwise allowed by permit. There was no such exception in the permit.

Although this question was not argued by the parties, for purposes of determining whether a Section 21(p)(5) violation may have occurred, the Board holds that Section 21(p)(5) requires that six inches of daily cover be applied. As the Board stated in a prior opinion:

The nexus between these regulations and the Administrative Citation procedure of the Act is that the Administrative Citation procedure was designed to expedite the regular enforcement process by identifying a subset of the larger waste disposal regulations which may be prosecuted through the Administrative Citation procedure. Dan Heusinkved, County Clerk, County of Whiteside, State of Illinois AC87-25, Docket A, January 21, 1988.

The Board will continue to construe the language in Section 21(p) in conjunction with related Board regulations.

The Agency inspector and the Rantoul witnesses were in disagreement as to whether the bulk of the five inch rain had fallen before the inspection and whether it was of an intensity to have caused, in effect, a "washout" at the landfill sufficient to explain the scattered refuse found exposed.

The inspector first hit the rain at 5:00 a.m. in Champaign, 25 miles away. At that time, the mayor had four feet of water in her basement in Rantoul, a mile and one-half away. The mayor testified that most all of the rain and severe flooding had occurred by 6:00 a.m. Rantoul's landfill superintendent agreed, from his own observations, and having looked at the landfill's rain gauge, which showed four inches at 6:00. The inspector's report was imprecise. The weather station, about one and one-half miles away, recorded only the duration and ultimate amount of the rainfall. The Board is persuaded that at least four inches of rain fell in a two and one-half to three hour period before the inspection, and that it was over and above a 100 year

frequency, as testified to by Rantoul's engineering consultant. The Board is also persuaded that even more water drained over the active slope from the rain falling on the flat top of the mound.

Regarding the effects of the rainfall on the cover in the active area, both the Agency inspector and Rantoul's landfill superintendent inspected the site and both gave conflicting observations and explanations. In reviewing the Agency inspectors' photographs, they generally show severe flooding, gullies, mud, refuse on the side of the hill and some floating in or surrounded by water; a few show lumps of dirt with little erosion. While a number show exposed refuse, it is not clear whether the refuse was dislodged by the torrent or not.

The Agency acknowledged that there were no large expanses of uncovered refuse, but emphasized that in some places the refuse protuded about a foot above the soil surface, thus 1 1/2 feet would have to have eroded if six additional inches of soil is added. The gully-like erosion channels that cut into cover material in stabilized slopes over time at landfills were not significantly present, nor was cover material at the bottom of the hill, nor was water running from any other place.

The Rantoul argues that over a four inch rain fell in a short period, over and above a 100 year storm, causing flash floods, and that such a rain, plus the added runoff, was capable of carrying refuse and washing away sufficient top soil cover to expose the rubbish. Rantoul buttresses its position by noting the special characteristics of the active area in use on July 29-30, 1987, i.e. an area 50' by 75' wide and 150' deep, on a 45 degree slope, below a large area that created additional run-offs, and 47' to 50' above the bottom of the original trench and on top of 10 to 15 layers of refuse and cover deposited earlier. The Village argues that as a matter of common sense, a filled and sloping area of this type is porous and will quickly settle and erode top soil down the slope in such a rainfall.

The testimony of the Mayor and the Landfill superintendent generally agreed on when most of the rain fell. The Weather Bureau Station's records, which recorded only the duration and total amount of the rain does not contradict their testimony. The Board is persuaded that the pattern and intensity of the rain prior to the inspection at the landfill and in Rantoul were not dissimilar. This conclusion is buttressed by the inspector's having to get to the landfill by a different route because of the flooding.

The Board concludes that the Agency inspector was not fully aware of the extent, the intensity, and the consequences of the prior rainfall when inspecting the site and thus did not take this into account when assessing the situation. Nor did he perceive the potential for further damage on an unstable, 45

degree slope landfill caused by the additional water flowing from the top of the landfill. Settling could occur and soil and refuse could be dislodged under such circumstances, the latter being another reason why a piece of refuse would protrude one foot. And the pattern of erosion on an uneven surface would indeed be different and explain why some chunks of dirt would remain relatively unscathed.

The pictures also tend on balance to buttress the landfill operator's view of the situation. The Board recognizes that both the inspector and landfill superintendent, both experienced, might genuinely make a different judgment as to what occurred. A key difference is that the inspector did not appreciate that the storm was a rare event; the unprecedented four feet of water in the Mayor's basement and Rantoul's engineering consultant's testimony certainly also indicated this. The Board is also persuaded that, because Rantoul was highly sensitive to the daily cover issue earlier raised by the Agency, the Landfill Superintendent's firm belief that care had been taken to properly cover the refuse must be given some weight.

According to Section 31.1(d)(2) of the Act, the Agency has the burden of proving the violation. There was no dispute that on the morning of July 30, 1988, not all refuse had six inches of daily cover; indeed, some of it was exposed. Rantoul then must show that the violation was due to uncontrollable circumstances.

Given the unusual circumstances - the slope characteristics, the torrential rain of rare occurrence, the flash flooding in town and at the landfill, evident both in the testimony and in the pictures, and as experienced by the inspector trying to reach the site, the Board finds that Rantoul has shown that the uncontrollable circumstances envisioned in Section 31.1(d) (2) apply in this case.

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

#### ORDER

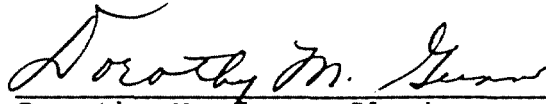
In accordance with Section 31.1(d)(2) of the Act, since the violation resulted from uncontrollable circumstances, the Board makes no finding of violation and imposes no penalty. The case is dismissed.

Section 41 of the Environmental Protection Act, Ill. Rev. Stat. 1985 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.



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

  
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Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board