

ILLINOIS POLLUTION CONTROL BOARD  
August 18, 1988

IN THE MATTER OF: )  
 )  
J AND R LANDFILL, INC., ) PCB #AC 88-23  
 ) PCB #AC 88-34  
Respondent. )  
 ) (88-3-SC-St. Clair  
 ) County Docket)

ORDER OF THE BOARD (by J. Anderson):

The County has requested the Board to review a July 1, 1988 Hearing Officer Order in these matters. The Board is taking action today to avoid delaying hearing in this matter which has already once been rescheduled and now is set for September 7, 1988.

The salient portion of the H. O. Order states:

Respondent asked for "All documents ... which relate to the landfill located in St. Clair County known as the Milam Landfill, currently operated by Waste Management,...".

Petitioner objected to the production of these documents on the grounds that they are irrelevant in this case. On June 15, a conference was held to discuss Petitioner's objection to production. During the conference, Respondent's counsel stated that he needs these documents in order to provide a factual foundation for a legal theory he wishes to develop in this case. This legal theory relates to the equality of treatment -- or inequality of treatment --- accorded Respondent J and R Landfill, Inc. in this case versus other landfill operators by the St. Clair County government and other governmental bodies.

The undersigned Hearing Officer ruled that Respondent may develop the factual basis for this legal theory during discovery, and consequently ordered production of the documents in question.

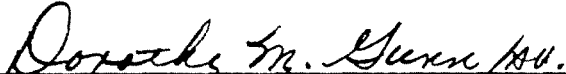
The Board finds that the requested documents are in fact irrelevant in this case, as the legal theory which respondent may seek to advance is beyond the scope of permissible issues in the administrative citation process as set forth in Sections 21(p) and 31.1 of the Act.

Section 31(d)(2) limits the defenses available to the respondent to two: that the violation complained of did not occur, or "that the violation resulted from uncontrollable circumstances". Had the legislature wished the Board to consider issues concerning exercise of prosecutorial discretion when reviewing administrative citations, it would have so stated.

The Hearing Officer's Order to produce documents relating to the Milam Landfill is overruled.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 18<sup>th</sup> day of August, 1988, by a vote of 6-0.

  
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Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board