

ILLINOIS POLLUTION CONTROL BOARD
November 8, 1984

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
v.) PCB 83-4
)
CITY OF EAST MOLINE,)
)
Respondent.)

MR. PHILIP L. WILLMAN AND MR. FINIS E. WILLIAMS, ASSISTANT ATTORNEYS GENERAL, APPEARED ON BEHALF OF THE COMPLAINANT.

SCHRAGER, BLACKWOOD & NOWINSKI, P.C. (MR. ALAN G. BLACKWOOD, OF COUNSEL) APPEARED ON BEHALF OF THE RESPONDENT.

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

This matter comes before the Board on a January 7, 1983 Complaint, as amended on February 10, 1983, filed by the Illinois Environmental Protection Agency (Agency) alleging that the Respondent, the City of East Moline (East Moline) operated its sanitary landfill in Rock Island County, Illinois in violation of the Environmental Protection Act (Act), Chapter 7: Waste Disposal of the Board's regulations, and certain conditions of permits issued to the Respondent. The period of violations alleged in the eleven count Amended Complaint occurred over nine years, beginning in 1973. Hearings were held on September 14 and 15, 1983, in Rock Island, Illinois. No members of the public attended. On November 7, 1983, the Agency filed its Closing Brief in lieu of closing arguments as agreed to by the parties at hearing (R. 474-476). Also filed was a Motion to File Instanter; that motion is granted. East Moline filed its Brief on December 8, 1983, and the Agency filed a Reply Brief on December 19, 1983.

The Respondent owns and operates a sanitary landfill, known as the East Moline Landfill, which is located on approximately fifty acres of land north of Grace Road and east of Ruth Road near the City of East Moline in Hampton Township, Rock Island County, Illinois. Wastes, including but not limited to, garbage, refuse and sludge are accepted at the East Moline Landfill. The operations are permitted. The first operating permit, Permit No. 1971-36, was issued by the Agency on September 23, 1971 (Ex. 15A)¹.

¹Unless otherwise indicated, the Exhibits referenced are Complainant's.

That permit contained conditions requiring daily cover, final cover, leachate control, and notification to the Agency should sludge disposal be considered by East Moline. A supplemental permit, No. 76-95, was issued on February 25, 1976, which contained conditions requiring Respondent to comply with Rule 305 of the Board's Solid Waste Regulations, Chapter 7.² Specifically, that permit contained conditions requiring that refuse be dumped at the toe of the slope of the working face; that the daily and intermediate cover requirements be complied with; that refuse be spread and compacted as received and deposited; that litter be collected and controlled each day; and that two feet of final cover be applied at all finished areas (Ex. 15B).

That supplemental permit had been preceded by another permit, No. 74-46, issued on April 8, 1974, allowing disposal of digested sludge at the East Moline with the condition that it be mixed with general refuse and promptly compacted, and covered applied to the same. A series of experimental permits were later issued by the Agency on December 29, 1980, March 29, 1982 and January 3, 1983, which allowed sludge to be received and disposed at the East Moline Landfill in trenches, subject to special conditions (Resp. Exs. 43, 45 and 46).

Nine Agency inspectors, who had visited the East Moline Landfill over the period of alleged violations, testified at hearing. The Agency also introduced inspection reports, sketches and photographs documenting at least sixty-two inspections. The Director of Public Services and the Assistant Director for the City of East Moline testified on behalf of the Respondent.

As originally adopted, Section 21 of the Act provided at paragraph (b) that no person shall "[c]ause or allow the open dumping of any other refuse in violation of regulations adopted by the Board;" [Ill. Rev. Stat. 1971, ch. 111½, par. 1021(b)]. Effective January 1, 1980 that Section was amended to provide at that no person shall: (a) "[c]ause or allow the open dumping of any refuse;" and (e) "[d]ispose of any refuse . . . except at a site or facility which meets the requirements of this Act and the regulations thereunder." Effective September 3, 1981 paragraph (a) was amended to provide that no person shall "[c]ause or allow the open dumping of any waste;" and Section 21 was also amended at paragraph (d) to prohibit any person from conducting any waste-storage, waste-treatment, waste-disposal, or special waste transportation operation without a permit, in violation of any condition imposed by such permit, or in violation of any regulation adopted by the Board. (Ill. Rev. Stat. 1983, ch. 111½, par. 1021). In each count of the Amended Complaint, the Agency alleges

²The Board Regulations cited herein have been codified since this action was brought. They are now contained in 35 Ill. Adm. Code: Subtitle G. For convenience in reviewing this record, the former numbering system is used in this Opinion and Order.

that Respondent acted in violation of Section 21 of the Act because it operated the East Moline Landfill in violation of the Board's regulations and conditions of its permits. Over the period of alleged violations, the pertinent parts of the statute, i.e., the prohibitions of open dumping and violation of Board regulations were in effect, albeit in different paragraphs of Section 21 of the Act. Likewise, it is alleged in each count that the respondent violated Rules 301 and 302 of the Board's regulations, which were in effect during the alleged period of violation. Rule 301 of Chapter 7 provides that no person shall operate a sanitary landfill unless this Rule and the other rules contained in Chapter 7 are complied with. Rule 302 requires that all conditions of each permit be complied with. The specific permit conditions and additional regulations allegedly violated are discussed in detail below.

Count I alleges that, on at least fifty-two occasions, Respondent allowed open dumping at the East Moline Landfill because it failed to provide daily cover (Amended Complaint, Ex. 3). The Agency complains that this is a violation of the open dumping prohibition contained in Section 21 of the Act, and also in violation of Board regulations, specifically Rules 305(a), 301 and 302.

In pertinent part, Rule 305 of Chapter 7 provides:

Unless otherwise specifically provided by permit, the following cover requirements shall be followed:

- (a) Daily cover - A compacted layer of at least six inches of suitable material shall be placed on all exposed refuse at the end of each day of operation.

Condition 6 of East Moline's first permit, No. 1971-36, and Condition 3 of the subsequent operating permit, No. 76-95, contained the same daily cover requirement as that set out in Rule 305(a). Therefore, if the allegations of open dumping and inadequate daily cover are found to be correct, East Moline will have violated Section 21 of the Act, Rules 305(a) and 301, the permit conditions contained in its permits during the respective period of violations, and, therefore, Rule 302.

Inspection reports, sketches and photographs describing and depicting incidences of inadequate or no daily cover were entered into the record. All nine of the Agency field inspectors who testified at hearing had filed reports. Also submitted were the inspection reports of inspectors who did not testify at hearing. (Ex. 11A-11G; R. 340.) These inspection reports indicated that daily cover had not been applied, and in those instances where it

had been, that it was inadequate. Photographs taken during the inspections clearly show uncovered refuse strewn about the landfill, even in areas away from the active area. The uncovered refuse consisted of tires, paper, wood debris, and metal drums. In some instances, it appears that attempts were undertaken to bulldoze under or to cover the refuse, and yet large amounts and large pieces of debris were still exposed. On the following dates, the inspection reports and accompanying photographs evidenced total or partial lack of daily cover at the East Moline Landfill.

<u>Date</u>	<u>Exhibit No.</u>	<u>Date</u>	<u>Exhibit No.</u>
October 11, 1973	1A* ³	March 11, 1980	5E*
January 17, 1974	11A*	March 25, 1980	5F*
February 27, 1974	1B	April 21, 1980	5H*
March 20, 1974	2A*	May 21, 1980	5I*
April 11, 1974	1D*	June 25, 1980	5J*
June 25, 1974	2B*	July 24, 1980	5K
July 24, 25, 1974	1D*	August 7, 1980	7A*
August 1, 1974	2C	August 12, 1980	7B
September 13, 1974	2D*	September 9, 1980	7C*
January 28, 1974	2F	September 26, 1980	8A
March 26, 1975	2G	November 14, 1980	8B
June 9, 1975	3A*	December 16, 1980	8C
July 8, 1975	10A*	February 26, 1981	8D*
September 2, 1975	11B*	March 31, 1981	8E*
November 13, 1975	10B*	April 28, 1981	8F*
April 7, 1976	10C*	May 29, 1981	8G
February 2, 3, 1976	11C*	July 27, 1981	7E*
January 2, 1977	11E*	September 3, 1981	8H*
February 24, 1978	11F*	January 22, 1982	9A
August 28, 1978	11F*	March 19, 1982	9B
October 17, 1979	5A*	April 9, 1982	9C
November 15, 1979	5B*	April 28, 1982	11G*
January 8, 1980	5C*	May 20, 1982	9D

The period of violations span nine years, all four seasons, and all types of weather. For example, on October 11, 1973 and March 20, 1974, openly dumped garbage and refuse was observed, and inadequate daily cover was reported. The photographs taken at each inspection depict large tracts of land with exposed paper and other debris. The weather on both those days was cloudy. (Ex. 1A*; 2A*). The same inadequate operating conditions were reported and photographed on May 9, 1974 when the weather was sunny (Ex. 2B); again on June 9, 1975 and July 8, 1975, warm and partially cloudy days (Ex. 3A*; 5I*); and on June 25, 1980, when weather conditions were warm and dry (Ex. 5J*). Even on winter days, for example, December 12, 1978 and January 8, 1980, when applying daily cover may be difficult if adequate preparation is not taken or the active fill area is too large, the debris exposed through the snow cover was not only the day's deposit, but that

³*Asterisks indicate photographs included.

previously disposed of at the site and left uncovered (Ex. 6D*; 5C*). On February 24, 1978, a sunny day with little visible snow cover, the inspection revealed a large expanse of uncovered, heaped lumber, tires, and general refuse (Ex. 11F*).

The reported areas of uncovered refuse ranged from 20 by 30 yards (Ex. 5A*) to 70 by 10 yards (Ex. 8A; 8B). That last area remained uncovered between two inspections, the first on March 26, 1980 and the second on November 14, 1980. At least twice, Respondent's employees admitted that those areas away from active fill area identified by the inspectors as inadequately covered had not been used that day, but in earlier weeks (Ex. 5J, 8D). In addition, the inspectors identified the inadequately covered areas to be not just the active fill areas, but separate from these areas (Ex. 1A; 1C; 10A; 11C; 11F; 6A; 6D; 6F; 6G; 5E; 5J; 8C; 8D; 8E; 8H). Not only does this indicate that intermediate cover was not provided, (which will be discussed under Count II) but that the six inches required on the refuse disposed of each day was either not provided or was insufficient. Furthermore, given the sizeable area and amount of uncovered debris, it is evident that daily cover was not adequately applied on the days discussed and in many other instances (e.g., Ex. 11F).

On at least nine occasions sludge was dumped into trenches and no cover was applied (Ex. 6F; 5B; 5C; 5D; 5E; 5F; 5H; 5I; 5J). This occurred over a period beginning March 27, 1979 through June 25, 1980. During the November 15, 1979 inspection an East Moline employee admitted that no cover had been applied for several days to the sewage treatment sludge (Ex. 5B). On February 14, 1980, the Director of Public Services admitted to the Agency inspector that the daily cover violations were due to his decision to dry out sludge in the trenches (Ex. 5D). During the next inspection on March 11, 1980, uncovered and partially dry sludge in a trench was again observed (Ex. 5E). Aside from the fact that this form of disposal violated the conditions of Permit No. 74-46, which required Respondent to mix the sludge with general refuse as opposed to trench disposal, failure to cover the sludge in the trenches violated Rule 305(a) and Section 21 of the Act.

Sometime in September, 1981, Respondent began to dispose of refuse in bales without providing daily cover. This was observed and reported on July 27, 1981, September 3, 1981, November 5, 1981, December 23, 1981, January 22, 1982, March 12, 1982, April 9, 1982 and May 20, 1982 (Ex. 7E*; 8H*; 8J; 9A; 9B; 9C; 9D). For the most part the bales were stacked three to six bales high in rows 150 to 200 feet in length. The bales were stacked away from the active fill area and no cover, natural or otherwise, was provided. They were observed to be breaking apart, allowing loose debris to fall away. The worst conditions were reported on April 28, 1982 when one inspector reported 22 uncovered bales in the active area of the fill; 40 piled in the inactive area, 15 of which were uncovered; and that the bales stacked in the middle were loose or broken, those stacked highest completely uncovered, and all were exposed at the sides (Ex. 11G*).

In addition to the bales, on at least three occasions, refuse deposited at the front gate of the East Moline Landfill was observed (Ex. 5C*; 5I*; 5J*). This observation, plus other evidence of open dumping resulted in the East Moline Landfill being placed on the Open Dump Inventory List. Inspections under this program revealed large areas of uncovered garbage, leachate, and erosion. The inspection reports for August 7, 1980, August 12, 1980 and September 9, 1980 cited little, if any, improvement and recommended that the site remain on that list. Leachate stains were observed off the site (Ex. 7A*; 7B*; 7C*). Inspection reports for visits on March 31, 1981 and July 27, 1981 again indicated uncovered refuse, and leachate problems (Ex. 7D; 7E).

Count II of the Amended Complaint alleges that Respondent failed to provide adequate intermediate cover in violation of Board Rule 305(b) and Special Condition 2 of Permit No. 76-95. Rule 305(b) of Chapter 7 provides that unless it is otherwise specified by permit, intermediate cover shall be applied . . .

At the end of each day of operation, in all but the final lift of a sanitary landfill, a compacted layer of at least twelve inches of suitable material . . . on all surfaces of the landfill where no additional refuse will be deposited within 60 days.

Condition 2 of Respondent's Supplementary Permit No. 76-95 requires compliance with Rule 305(b). The Agency alleges that on at least 43 occasions Respondent failed to apply sufficient intermediate cover. (Amended Complaint, Ex. 4).

Between October 11, 1973 and October 12, 1978 six Agency inspectors made approximately twenty-five visits to the East Moline Landfill. At twenty-one of those inspections, insufficient or lack of intermediate cover was reported. The dates and exhibits documenting the same are:

<u>Dates</u>	<u>Ex. Nos.</u>	<u>Dates</u>	<u>Ex. Nos.</u>
October 11, 1973	1A*	March 26, 1975	2G
February 27, 1974	1B	June 9, 1975	3A*
March 20, 1974	2A*	July 8, 1975	10A*
April 11, 1974	1C*	September 2, 1975	11B
June 25, 1974	2B*	November 13, 1975	10B*
July 24, 1974	1D*	June 3, 1976	3B*
August 1, 1974	2C*	September 16, 1976	3C*
September 13, 1974	2D*	February 2, 1976	11C*
October 29, 1974	2E	December 2, 1977	11E
January 28, 1975	2F	August 12, 1978	6A*
		October 12, 1978	6B

Between 1979 and 1982, three additional field inspectors visited the site thirty-two times. At least nine times insufficient intermediate cover was observed. On October 17, 1979

three areas - 10 by 5 yards, 60 by 20 yards, and 20 by 10 yards were without sufficient intermediate cover (Ex. 5A*). On November 15, 1979 two large stretches, 80 by 30 and 25 by 10 yards, lacked intermediate cover (Ex. 5B*). On January 1, 1980, again two large areas, each 80 by 30 yards, were without immediate cover and remained that way until a March 11, 1980 inspection, even though the Director of Public Works admitted to a field inspector on February 14, 1980 that no work had been done on the area. On March 11, 1980 a new area was also observed to be insufficiently covered (Ex. 5C*, 5D*, 5E*). On March 25, an entire hillside, 200 by 50 yards, to the east of the fill area had eroded and needed intermediate cover (Ex. 5F*). A portion of that same area, 70 by 40 yards remained inadequately covered when inspected on April 21 and June 25, 1980 (Ex. 5H*; 5J*).

Beginning on September 26, 1980 through April 9, 1982 the inspections made on the following dates revealed sizable areas lacking sufficient intermediate cover.

<u>Date</u>	<u>Size</u>	<u>Ex. No.</u>
September 26, 1980	60 x 50 ft. 400 x 10 ft.	8A
November 14, 1980	2 acres	8B
December 16, 1980	60 x 50 ft.	8C
February 26, 1981	400 x 10 ft. 50 x 50 ft. 60 x 50 ft. 400 x 10 ft. 50 x 50 ft.	8D*
March 31, 1981	150 x 30 ft.	8E
April 28, 1981	150 x 30 ft. 200 x 30 ft.	8F*
May 29, 1981	100 x 300 ft.	8G
March 19, 1982	2 acres	9B
April 9, 1982	2 acres	9C

As already discussed under Count I (Supra. pg. 5), on September 3, 1981 disposal of baled refuse was observed, which was not a permitted activity. (Discussed further under Count XI.) The inspector reported that an employee of the Respondent stated that the bales were being used to facilitate intermediate cover on one of the site's slopes (Ex. 8H*). Nevertheless, bales still remained uncovered according to the November 5, 1981, inspection report (Ex. 8I), and inadequately covered at a December 23, 1981 inspection, which resulted in fallen refuse being exposed on the surrounding ground (Ex. 8J). During the March 19, 1982 inspection, the entire two acres (listed above) consisted of baled refuse with little or no intermediate cover (Ex. 9B).

Count III of the Amended Complaint alleges that Respondent failed to provide final cover in violation of Rule 305(c), which provides in pertinent part that unless otherwise specifically provided by permit, the following final cover requirements shall be applied...

a compacted layer of not less than two feet of suitable material...over the entire surface of each portion of the final lift not later than 60 days following the placement of refuse in final lift.

East Moline's Permit No. 1971-36 contained no special conditions, and Supplementary Permit No. 76-95 provided at Condition 5 that "[a]ll finished areas of the landfill shall be covered with two (2) feet of cover material", the same requirement set out in Rule 305(c). The Agency alleges that on at least 16 occasions, Respondent failed to apply two feet or more of suitable cover on the surface portions of the final lift within sixty days following the final placement of refuse in that portion, as required by permit and Board regulations (Amended Complaint, Ex. 5).

On the following dates, final cover deficiencies were noted on the Agency inspection reports, because no cover had been applied where required, or because the depth of that applied was inadequate, and in some instances, both deficiencies were noted.

<u>Date</u>	<u>Ex. No.</u>
October 11, 1973	1A*
February 27, 1974	1B
March 20, 1974	2A*
April 11, 1974	1C*
June 25, 1974	2B*
July 24 & 25, 1974	1D
August 1, 1974	2C
September 13, 1974	2D
October 27, 1974	2E
January 28, 1975	2F
March 27, 1979	6F
June 15, 1979	6G*

Those photographs accompanying the reports show refuse uncovered to the extent that there appears to be little, if any, cover supplied to satisfy the daily and intermediate cover requirements, let alone to satisfy the requirement that two feet cover the closed portions of the final lift.

Many of the photographs attached to other inspection reports appear to evidence insufficient final cover. For example, in one photograph, attached to the August 29, 1978, report, barrels surrounded by weeds and vegetative overgrowth are pictured; in another slopes shown have debris poking through the vegetative growth (Ex. 6A). Similarly, in the photographs attached to the February 14, March 25, and June 25, 1980 reports, refuse is seen atop the ground's surface and surrounded by vegetative growth (Ex. 5E*, F*, J*). However, final cover deficiencies are not reported on the inspection list for these days. Therefore,

despite the vegetation appearing to be higher and more abundant than sixty days growth would allow, that fact cannot be assumed or can it be assumed that areas depicted are closed portions of the East Moline Landfill requiring final cover. However, the same pictures evidence lack of intermediate and daily cover (which was discussed above), and that large areas of totally and partially exposed refuse were prevalent at the East Moline Landfill over the years.

Count IV of the Amended Complaint alleges that Respondent deposited refuse in places other than the toe of the fill in violation of Rule 303(a) of the Board regulations and Condition 1 of Permit No. 76-95. Rule 303(a) requires that all refuse be deposited in either the toe of the fill or into the bottom of the trench. However, Condition 1 provided that all refuse at the East Moline Landfill be deposited at the toe of the slope of the working face, and did not provide for trench disposal. Trench disposal is discussed under Counts IX and X (infra, pg. 13, 14).

On the following dates, the inspection reports and the photographs, where indicated, evidence that refuse was deposited in placed other than at the toe of the active fill area.

<u>Date</u>	<u>Ex. No.</u>
June 9, 1975	3A*
July 8, 1975	10A
September 2, 1975	11B
November 13, 1975	10B
July 27, 1976	3B
December 15, 1976	3D*
October 17, 1979	5A
November 15, 1979	5B
January 8, 1980	5C*
February 14, 1980	5D
March 11, 1980	5E*
April 21, 1980	5H*

On the first reported instance, the inspectors observed Respondent's employees pushing refuse into a steep sloped ravine. In most of the other cases, the refuse was deposited at the top of the slope. Apparently, the employees were aware that this was unpermitted activity for when asked about it during the November 15, 1979 inspection, the foreman told the Agency inspector that a ramp was being built to allow access to the toe of the slope (Ex. 5B). However, on the next visit, January 8, 1980, refuse was again observed dumped at the top of the slope (Ex. 5C), and throughout that winter and spring.

Count V of the Amended Complaint alleges that the Respondent failed to comply with Rule 303(b) of the Board's regulations and Condition 4 of Permit No. 76-95, in that it failed to spread and compact refuse. Rule 303(b) provides in pertinent part:

...as rapidly as refuse is deposited at the toe of the fill, all refuse shall be spread and compacted in layers within the cell, such layers not to exceed a depth of two feet.

The Agency alleges that violation of this rule and Condition 4 of the permit, which parallels the rule, is also violation of Rules 301 and 302, and Section 21 of the Act, and that the Respondent did so at least ten times (Amended Complaint, Ex. 7).

For the following dates, the Agency inspectors reported finding that the refuse had not been spread and compacted.

<u>Date</u>	<u>Ex. No.</u>
February 27, 1974	1B
June 9, 1975	3A*
July 8, 1975	10A*
June 1, 1977	11D
December 12, 1978	6D
January 8, 1980	5C
April 21, 1980	5H
May 21, 1980	5I

Count VI of the Amended Complaint alleges that on at least seventeen occasions, Respondent violated Rule 306 which provides:

All litter shall be collected from the sanitary landfill site by the end of each working day and either placed in the fill and compacted and covered that day, or stored in a covered container.

Containing identical language, Condition 6 of Respondent's Permit No. 76-95 required East Moline to control litter at the landfill daily. On the following dates, Agency inspectors reported that the litter was not being controlled at the site, and oftentimes blowing off-site (e.g., Ex. 7D and 10C).

<u>Date</u>	<u>Ex. No.</u>
October 11, 1973	1A
February 27, 1974	1B
March 20, 1974	2A
March 26, 1975	2G
April 7, 1976	10C
January 8, 1980	5C
March 11, 1980	5E
March 25, 1980	5F
April 21, 1980	5H
June 25, 1980	5J
December 16, 1980	8C

<u>Date</u>	<u>Ex. No.</u>
June 25, 1980	5J
December 16, 1980	8C
February 26, 1980	8D
March 31, 1981	7D, 8E
May 29, 1981	8G
December 23, 1981	8J
January 22, 1982	9A
March 19, 1982	9B

Over the period of these inspections, the inspectors observed litter caught in tall grass, in the area of an off-site intermittent stream, along the roadway leading to the active fill area, in the wooded areas at the northern portion of the site and on the east side (Ex. 5C, 8E, 9A). On some occasions, the litter observed was still uncollected and properly disposed of on subsequent visits (e.g., January 8, March 11 and March 25, April 21, 1980; January 22 and March 19, 1982). At the April 21, 1980, inspection, the Assistant Director admitted that the same litter had been there for over a month (Ex. 5H). On the August 7, 1980 inspection report, it was noted that the litter fence at the northern part of the site was missing (Ex. 7A). At the March 31, 1981 inspection, the Agency's field officer reported that some snow fences had been erected, and an employee of the Respondent stated that more fences would be installed. At hearing, the Respondent testified that snow fences were purchased, but not until sometime in the fall of 1981 (R. 416). The inspection reports before and after that time indicate litter problems. For example, at the March 19, 1982 inspection, the Agency field officers reported that "no apparent attempt to pick up the litter, as it was bleached and faded looking" (Ex. 9B).

Count VII of the Amended Complaint alleges that Respondent conducted the East Moline Landfill without adequate measures to control leachate in violation of Rule 314(e), which provides, among other thing, that no person shall operate a landfill without such controls. The Agency alleges that on at least fourteen occasions, since July 24, 1974, Respondent violated that rule, and thereby, violated Rule 301 and Section 21 of the Act (Amended Complaint, Ex. 9). The Agency introduced inspection reports, some with photographs, indicating that on the following dates uncontrolled leachate was observed:

<u>Date</u>	<u>Ex. No.</u>
July 24, 1974	1D
August 1, 1974	2C
June 9, 1975	3A
July 8, 1975	10A

August 29, 1978	6A
March 27, 1979	6F
May 15, 1979	6G*
October 17, 1979	5A*
November 15, 1979	5B*
January 8, 1980	5C*
April 21, 1980	5H*
May 21, 1980	5I*
June 25, 1980	5J*
September 8, 1980	7C*

Twice the inspection reports documented that the leachate formed streams which moved off-site. The leachate reported on March 27, 1979 which the inspector wrote to be possibly "due in part to frost bleeding, but the lack of proper cover probably caused the major generation," was reported to have grown to the extent that it was flowing off-site onto adjacent farm land at the May 15, 1979 inspection (Exs. 6F, 6G). The second incident was reported on September 9, 1980, when the Agency inspector reported finding leachate stains off-site at an intermittent stream. That report stated, based on the path marked by the stains, that the leachate had traveled from the southern most point of the landfill's active area (Ex. 7C*). Over the twelve months just prior, an Agency inspector had reported leachate problems at and near the trenches at the southern boundary of the landfill. In fall of 1979, the leachate flow from trenches (unpermitted at that time) towards the southern boundary grew in length to as long as 100 yards (Ex. 5A*, 5B*). In the winter, the leachate's movement was brought to a halt by the freezing temperatures (Ex. 5C). The next spring, the leachate ponded within the trenches, aggravating the erosion within and outside of them, and facilitating the streams to flow from the trenches towards the boundary (Ex. 5H). The leachate stains observed off-site in September of 1980, a year after the initial reports, is likely to have originated from the trenches where the ponding and erosions had been reportedly occurring.

Count VIII of the Amended Complaint alleged that the Respondent had failed to provide adequate means to control vectors in violation of Rule 314(f) of the Board's regulations. That rule provides that no person shall cause or allow the operation of sanitary landfill unless adequate measures are taken to control vectors, along with dust. Violation of this rule, triggers violation of Rule 301 and Section 21 of the Act.

On the following dates, the inspectors reported heavy populations of flies at the site; dogs feeding at the site; flocks of birds scavenging; or combination of the same.

<u>Date</u>	<u>Ex. No.</u>
August 1, 1974	2C
July 8, 1975	10A
November 15, 1979	5B

January 8, 1980	5G
May 21, 1980	5I
June 25, 1980	5J
August 7, 1980	7A
August 12, 1980	7B
December 16, 1980	8C
March 9, 1982	9B
April 28, 1982	11G

The problem with vectors is, of course, related to the lack of adequate cover at the site. If adequate daily and intermediate cover were provided, the problem should be minimal. Yet, at the November 15, 1979, inspection, Respondent's foreman admitted that the landfill's operations were hampered by the presence of a pack of wild dogs. The inspection report for that date and those in the months immediately following found the daily and intermediate cover provided to be inadequate, and incidences of blowing litter, and garbage dumped at the gate (Ex. 5C, 5D, 5D, 5F, 5H, 5I, 5J). At hearing, the Respondent queried two inspectors about when they would report flies a problem. One stated that when it constituted a "heavy" fly population, when there was a gross number, and the other stated that a violation would be marked when they interfered with writing or talking (R. 263, 288, 294).

Count IX of the Amended Complaint alleges that Respondent disposed of sewage treatment sludge in violation of Permit No. 74-46, which provided in pertinent part "[d]isposal of a digested sludge shall include mixing with general refuse and prompt compacting and covering of said refuse." Count X of the Amended Complaint alleges that in constructing the trenches to deposit the sludge, Respondent violated Rule 210. That rule prohibits modification of any solid waste management site, or acceptance of any type of waste except as provided by permits. It further provides that existing permits can be modified by supplemental permits to allow said modified activities.

East Moline's initial operating permit required Respondent to modify its permit by notifying the Agency before disposing of sewage treatment sludge. It was twice modified to provide for sludge disposal. The first supplemental permit, issued on April 8, 1974, allowed East Moline to accept such sludge if it disposed of it by mixing it with general refuse. The second modification consisted of a series of three experimental permits, each allowing East Moline to dig trenches and dispose of sewage treatment sludge in them. Both Counts IX and X allege that the trench digging and disposal of sludge in the trenches was observed at least twenty times, beginning on October 12, 1978, through December 16, 1980, the period of time when the first supplemental permit, No. 74-46 was in effect and prior to the series of experimental permit being issued (Amended Complaint, Ex. 10).

On the following dates, the inspection reports and photographs depict sludge being dumped into open trenches:

<u>Date</u>	<u>Ex. No.</u>
October 12, 1978	6B
December 12, 1978	6D*
January 31, 1979	6C
February 22, 1979	6E
March 27, 1979	6F
May 15, 1979	6G*
October 17, 1979	5A*
November 15, 1979	5B*
January 8, 1980	5C
February 14, 1980	5D
March 11, 1980	5E
March 25, 1980	5F*
April 21, 1980	5H*
May 21, 1980	5I*
June 25, 1980	5J*
July 24, 1980	5K
August 12, 1980	7B
September 9, 1980	7C
September 26, 1980	8A
November 14, 1980	8B
December 16, 1980	8C

Trench disposal of the sewage treatment sludge took place primarily at the northern end of the East Moline Landfill, according to the sketches attached to the inspection reports. As indicated by the above dates, it took place all year round, with new trenches continually being dug. When the ground was frozen, the sludge was deposited on the ground (Ex. 5C), and during warmer weather, it was sitting in standing water in the trenches (Ex. 5H, 5J). In three instances, it was observed to be uncovered, dried, cracked, and erosion to be occurring (Ex. 5E, 5J, 8A). At the February 14, 1980 inspection where the inspector noted that the trenches remained opened with sewage treatment sludge lying exposed (Ex. 5D). It was at this inspection the Director of Public Services told the inspector that this was done to allow the sludge to dry out (supra. pg. 5). On March 11, 1980, the sludge was still being dumped into trenches (Ex. 5E). At the September 9, 1980, the inspector observed new trenches containing standing water, and a truck dumping sludge into the standing water (Ex. 7C).

In addition to the statements made at the February 14, 1980 inspection, the Director of Public Services thrice acknowledged, by letter, that East Moline was not handling the sewage sludge in accordance with Permit No. 74-46 (Ex. 15G, 15H, 15I). The rationale was that more sludge was being produced than anticipated and the volume of refuse was less than anticipated. The result was that the sludge leaked out.

The problem involved is more than a permit violation. By leaving the trenches uncovered, rain water, snow and other elements in combination with the sludge aggravate leachate and erosion

problems. Open dumping and open trenches of sludge also aggravate vector problems. The purpose of the permit is to condition the activity so as to minimize or eliminate these problems.

Count XI of the Amended Complaint alleges that Rule 210 was violated because East Moline was never permitted to accept baled refuse. The following dates and inspection reports document this activity and the resulting problems.

<u>Date</u>	<u>Ex. No.</u>
July 31, 1981	7E*
September 3, 1981	8H*
November 5, 1981	8I
December 23, 1981	8J
January 22, 1982	9A
March 9, 1982	9B
April 9, 1982	9C
April 28, 1982	11G*

As already discussed under Counts I and II, during this time period, this activity was extensive. The rows of baled refuse were as long as two hundred yards, as high as six bales stacked (Ex. 9C, 11G). At one point, one-third of the East Moline Landfill area surrounded by the access road was covered with baled refuse (Ex. 9C, 9D). Stacked as they were, and uncovered, the bales collapsed and broke apart, allowing loose refuse to fall to the ground (Ex. 8J). This, of course, would contribute to the vector and litter problems.

Respondent offered no testimony or evidence denying the violations alleged in the Amended Complaint. Rather, Respondent's two witnesses and exhibits were presented for the purpose of mitigation. The first witness, the Assistant Director of Public Services for the Respondent since 1979 testified that in 1981 a snow fence was purchased at the cost of \$1,060 and erected, that during 1981 and 1982, litter was collected weekly, and that a truck maintained the access road (R. 416, 424-425). The witness also stated that he visited the East Moline Landfill at least once a week over the preceding year, and offered further that he did not "think any site is ever one hundred percent in total compliance" (R. 427).

Respondent's second witness was the Director of Public Services for the preceding thirteen years (R. 430). The Director described the landfill to be in a rural area surrounded by farms, another landfill, and woods. He testified that it accepts on the average one hundred cubic yards of garbage per day, four days a week, and usually has two active areas. He admitted that the East Moline Landfill had accepted baled refuse, and attempted to get a permit to do the same. It stopped taking baled refuse when it did not get "a definite commitment from the EPA" (R. 438, 463). The Director described the landfill's leachate control program to

consist of identifying the source, redirecting the drainage water so that it comes out at the surface, and covering the area to stop the flow (R. 439). As for controlling vectors, the Director did not believe there was a problem, especially since the landfill is in a rural area near the river. To control litter, the Director briefly described the collection program detailed by the Assistant Director.

The Director admitted that the sludge accepted from the East Moline water treatment plant was generated from sewage received from East Moline, Silvis and Carbon Cliff (R. 458-459, Resp. Ex. 4). He authored the letters explaining to the Agency that the volume of sludge per day, fifty cubic yards, was greater than anticipated and that the average volume of refuse, one hundred cubic yards per day, was insufficient to mix it with (R. 463-464, Resp. Ex. 5). He had considered the option of disposing the sludge at another landfill, but did not do so (R. 464-465). He also admitted that "since day one" the landfill has used the top of the fill on wet weather days, while he was aware that the solid waste regulations require that it be deposited at the toe of the active fill area (R. 459-460).

As for daily cover, the Director stated that the purpose of daily cover is "questionable" and it is applied because the regulations require it (R. 461). As for the baled refuse, he acknowledged that despite their size, six by six feet, they could have been covered had it been determined necessary. It was his understanding that cover is not required by the regulations because of information obtained about Madison, Wisconsin, and "a place in the Wyoming" (R. 467-468, 470).

In general, the violations alleged in the Amended Complaint can be divided into two categories. Counts I through V and IX through XI pertain to the proper operation of a sanitary landfill, (e.g., cover, compaction, trench disposal) while Counts VI through VII are the results of an improperly operated landfill (e.g., leachate), besides being violations in and of themselves if not controlled. The Agency inspection records for sixty-two inspections over a period of nine years demonstrate continued violations by the Respondent of the regulations pertaining to proper operation, failure to control the resulting problems, and continued violation of Respondent's permits. The exhibits include not only the routine inspection reports, which Respondent received copies of, but also written descriptions, photographs, and sketches over the nine years. The violations reported were submitted by fourteen inspectors, who repeatedly recorded the same violations from visit to visit and little or no progress.

Counts I, II and III address the cover required at landfills -daily, intermediate and final - so that the operations do not constitute open dumping, and to minimize or eliminate environmental problems. There is no definition in the Act or Board regulations of what constitutes open dumping. It is obvious, however, that if waste is accepted and not adequately

covered at a landfill, the refuse will be exposed, that is, openly dumped.

As discussed above, on numerous inspections, East Moline failed to provide daily cover at active areas of the fill, intermediate cover where the area had been inactive for sixty days, and of final cover when the area was closed. Oftentimes, it appeared that no cover had been applied at inactive areas, let alone the six inches required daily, or the twelve inches required under the daily and intermediate rules, combined. Violation of these requirements, either individually or in combination, resulted in the East Moline Landfill being an area, which at its worst, with exposed tires, timber, drums, baled refuse, sludge (in and out of open trenches), and assorted garbage strewn about. At its best, inadequate cover resulted in the same poking through the ground surface creating leachate and erosion problems.

Under Counts IV and V, it was evidenced that refuse was not compacted or deposited at the toe of the active area of the fill but just dumped where convenient. This was not just the case in inclement weather. If the active area of the fill is expanded by random dumping and the refuse is not compacted or is compacted in depths deeper than two feet, it follows that it is difficult to properly cover. The purpose of those two regulatory and permit requirements is to facilitate proper cover at the landfill, while the three cover requirements are intended to prevent environmental problems, such as leachate, vectors, litter and erosion.

Under Counts IX, X and XI, the Agency proved that Respondent engaged in two unpermitted disposal activities. Respondent accepted sewage treatment sludge generated from its waste water treatment plant which serviced East Moline and two other municipalities. As of 1974, this activity was permitted. However, instead of mixing the sludge with other refuse received and covering the same, as required by permit, Respondent dug trenches and disposed of the sludge in them, and finally, did not cover the trenches. Respondent admitted to this form of operation. The open trenches suffered erosion because the liquid sludge and trench walls were exposed to nature's elements, such as rain, heat, and cold. The open trenches also contributed to leachate and vector problems.

During an overlapping period of time, Respondent also accepted baled refuse which was not a permitted activity. No permit for this type of disposal was ever received. The bales were deposited at inactive and active areas of the fill. The Agency's inspection reports and accompanying photographs evidence that the number of bales received and not covered were extensive. They broke apart, contributing to the vector and litter problem at the site.

Counts VI, VII, and VIII charge that the site was plagued by litter, vectors, and leachate. The weekly litter collection program initiated in 1981 was not sufficient since large amounts of paper and other debris were observed stuck in the surrounding woods and grass. The presence of flies, wild dogs, and birds feeding off the exposed garbage again evidence lack of sufficient cover. The evidence of leachate on and off-site, likewise indicate that there was insufficient cover over the refuse and degradation of the trenches. One means to control all three problems would have been to comply with the three cover requirements.

Respondent seems to attribute violations of the cover requirements to inclement weather. However, as one Agency inspector testified, these can be avoided if a program anticipating the same is provided. Such a plan would include having alternative disposal areas within the site near the entrance, stockpiling cover close to the active fill face, or saving the highest ground for wet weather operations. For cold or freezing weather conditions, stockpiled cover can be provided, so that the machinery can dig into it. Again, continuing compliance with the cover requirements should alleviate the leachate, vector, and litter violations. To control litter, maintaining fewer active areas and positioning them leeward, can minimize the blowing of litter (R. 351-355).

One procedural issue is outstanding. The Agency argues that Respondent's Exhibit No. 48 was improperly admitted into evidence over its objections of attorney-client privilege, hearsay, and relevancy. Respondent's Exhibit No. 48 is a handwritten copy of a memorandum between an Agency attorney and the Manager of Solid Waste Permit Unit. The copy was made by an employee of Respondent's who did not appear at hearing. The Respondent argues that the attorney-client privilege was waived because Respondent's employees viewed the document in question at the Agency, before this action was filed; that the hearsay exclusion is inapplicable because the author was an agent of the Complainant; and that the memorandum is relevant to the issue of a penalty (R. 319-323; 417-423). The hearing officer ruled that the attorney-client privilege was waived, and that the document was not excluded as hearsay, and that it was relevant (R. 323; 420, 421).

The Board affirms the hearing officer's decision that attorney-client privilege was waived, but reverses the hearing officer's rulings on hearsay and relevancy. Neither the author nor the copier was available for cross-examination regarding the memorandum. Even if the truth of the matter is not Respondent's purpose in entering the document, it is irrelevant. The subject matter of the memorandum was Section 39 of the Act which delineates the Agency's duties and obligations in issuing permits. There is no question that the Agency issued supplementary and experimental permits to Respondent during the period of violations. Parenthetically, the Board notes that even

were it to rule the other way on the aforementioned procedural issue, the record in this case clearly indicates that numerous violations occurred which would justify a substantial penalty as an aid in the enforcement of the Act.

The Board finds that the Respondent, East Moline, operated its fifty acre landfill in such a manner as to cause the repeated violations of the Act, Board regulations, and its operating permits described above on at least those given dates. These violations have been repetitive and persistent despite the numerous inspections and accompanying reports of violations. In each instance, except for the inspections made under the Open Dump Inventory Program (Ex. 7A-7E), the inspection sheets identifying the violations was left with Respondent's personnel if they were on-site. Beginning in 1973 through 1981, thirty-six letters were sent to the Respondent, identifying the problems and violations at the site (Ex. 12A-12Q, 4A-4G, 13A-13L). Even the testimony and exhibits proffered by the Respondent demonstrate that East Moline was aware of the violations (Resp. Ex. 4, 5, 15, 21, 31, 40, 42). The Director of Public Services testified that he knew the regulations, but refused to acknowledge the problems and the need to comply with regulations (R. 440, 460-463).

Pursuant to Section 41 and 33 of the Act, the Board is authorized to assess a penalty for violations of the Act, Board regulation or permit, or condition thereof, to revoke a permit as a penalty for violation, and to include a cease and desist order. In so doing the Board is statutorily required to take into consideration "all the facts and circumstances bearing upon the reasonableness of the emissions, discharges, or deposits involved..." The Act also delineates four criteria for the Board to consider. Respondent likewise reminds the Board of its obligation to consider these criteria in assessing a penalty.

Respondent argues that no penalty is justified after the factors delineated in Section 33(c) of the Act are taken into account. First, the Respondent argues that (1) there was no evidence of any injury or interference with public health and no citizen complaints about the landfill; (2) the site has a beneficial social and economic value in its role as the place wherein refuse and garbage from city residents and sludge from the municipal sewer plant are conveniently and properly disposed of; (3) the site is perfectly situated in a rural area about 1/2 mile off a county road, having its own entrance road, surrounded on two sides by woods and on the other sides by another privately owned landfill and a farm field; and (4) there are no emissions, discharges, or deposits emanating from the site (R. 422-435).

As for the first criteria - injury or interference with public health, welfare and property - Respondent argues that there was no evidence of injury because there were no citizen complaints or problems caused to neighboring lands (Reply Brief, pg. 12). There is, however, uncontroverted evidence of uncovered refuse, uncontrolled leachate on and off the landfill site, open

and unpermitted constructed sludge trenches, open dumping at the gates of the landfill and inside the site, and inadequate control of litter and vectors over a period of nine years. While the landfill is somewhat isolated, the improper operations evidenced are violations of the Act, regulations, and East Moline's permits resulting in a misuse of the land. As stated in Section 20 of the Act, the purpose of Title V is to prevent pollution. The statutory means for accomplishing that are the Board's regulations which designate the proper methods for landfilling so as to prevent pollution, and the permitting system which further delineates the proper methods to operate the particular landfill permitted. For a period of nine years, Respondent has repeatedly violated the terms of its permits, the Board's regulations, and the Act, thereby causing environmental harm and thwarting one of the purposes of the Act, that is to prevent pollution. The evidence shows that leachate did travel off-site; that the flies, birds, and dogs attracted to breed and feed at the site due to the exposed refuse and the sludge, do leave the site and threaten to carry disease; and that the litter did blow or was carried by leachate off-site. Furthermore, the sloppy operations at the East Moline Landfill resulted in environmental harm not only during the period of violations, but also increase the inherent environmental dangers posed by landfills, including sanitary landfills, especially to the waters of the State, in the years to come.

Respondent next argues that the East Moline Landfill has social and economic value because it serves the residents of East Moline and two smaller communities. While that is true, the purpose of the landfill and its operation are readily distinguishable. Every community must dispose of its garbage. That is not to say the place of disposal can be operated in such a manner as to constitute an open dump much of the time, create health hazards, and be a source of potential pollution to groundwater, nearby intermittent streams, and neighboring lands. The social need for a landfill does not override the violations evidenced at this site. While the Board does not dispute that a landfill serves a social and economic good, a properly operated landfill better serves the public's need.

As the third criteria, Respondent argues that the landfill "is perfectly situated". However, just because a landfill is in a rural setting does not mean that garbage dumped on the access road, litter blown into the surrounding woods and grass, flies and scavenging birds, cats and dogs, leachate on site and migrating to nearby property, heaped and baled refuse, and open disposal of sewage sludge can be tolerated. Furthermore, siting is not the issue, proper operation of the potential and actual source of pollution is.

As to the fourth criteria - the technical practicality and economic reasonableness of reducing or eliminating the pollution from the source - Respondent argues that there are no emissions, discharges, or deposits emanating from the site. Respondent adds that it has erected snow fencing to control litter, has used

prisoners on work release programs to police the area, albeit intermittently, oiled the roads to control dust, and attempted to apply sufficient cover. Throughout the hearing and in its Reply Brief, Respondent implied that wet or cold weather precluded it from applying sufficient cover to the refuse received. However, as already discussed, landfills can and do prepare in advance to insure proper operation during inclement weather (supra, pg. 18). None of these methods, such as stockpiling cover or reserving high land for wet and cold weather, necessitate expenditures beyond those normally required in operating a landfill. All were within Respondent's means during the period of violations as evidenced by the Agency inspectors' observations of improvement, although these were infrequent and fleeting (Ex. 5D, 5F, 8F, 8G).

The repeated promises to improve, the constant disregard for permit conditions, continued operation without proper permits and plans, demonstrated that the operator, the City of East Moline lacked commitment to comply absent an enforcement action. For those reasons, the Board will invoke its authority granted under Section 33 and 42 of the Act as follows: Respondent's operating permit insofar as it allows East Moline to accept waste is revoked. Since the correspondence exchanged and the inspections conducted by fourteen inspectors over the nine years did not prompt the City of East Moline, which had the same Director of Public Services over the period of violations, to operate its landfill in any manner close to full compliance, it is apparent that a different and professional management system is needed. To facilitate this transition and avoid shutting down the site, the revocation will not be effective until May 8, 1985. During this period, the City of East Moline is ordered to immediately cease and desist from violations of the Act, Board Regulations, and condition of its permits. To insure that it does so, the Respondent is ordered to submit a operating plan which anticipates wet and freezing weather, provides control plans for litter, vectors, and leachate and provides for daily, intermediate, and final cover at those inactive areas of the site not yet in compliance and, as needed in the future, at the active areas of the East Moline Landfill.

The Agency requested a penalty of \$200,000 which the Board believes unnecessarily high for purposes of deterrence, since the Board is acting to revoke the Respondent's operating permit. Nevertheless, the Board agrees with the Agency's fundamental premise that the conduct of the Respondent over the last decade is unacceptable and cannot be excused and that the improper operations at the site have caused and may have resulted in an increased threat of water pollution. Furthermore, the record indicates that aside from the normal personnel costs for operating a landfill, and necessary costs for machinery, Respondent's expenditures have hardly been out of the ordinary. On the face of it, the Respondent has saved money by its ineffectual and inefficient operation of the landfill. Having found that the Respondent, the City of East Moline, has violated Rule 210, 302, 303(a), 303(b), 305(a), 305(b), 305(c), 306,

314(a) and 314(f) of the Board's Regulations and Section 21 of the Act, and after considering the criteria set out at Section 33(c) of the Act the Respondent is ordered to pay a penalty of \$30,000 to aid in the enforcement of the Act.

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

ORDER

It is the Order of the Illinois Pollution Control Board that:

1. The Respondent, the City of East Moline, has violated Rules 210, 301, 302, 303(a), 303(b), 305(a), 305(b), 305(c), 306, 314(a) and 314(f) of Chapter 7: Solid Waste Regulations and Section 21 of the Illinois Environmental Protection Act.
2. The Respondent's operating permit insofar as it allows the Respondent to accept waste is revoked, effective as of May 8, 1985.
3. The Respondent shall immediately cease and desist from further violations.
4. Within 45 days of the date of this Order, the Respondent shall, by certified check or money order payable to the State of Illinois, pay a penalty of \$30,000 which is to be sent to:

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

5. Within 45 days of the date of this Order, the Respondent shall submit to the Agency a plan for enacting remedial measures to eliminate the recurrence of past problems. This plan shall include, but shall not be limited to, a program to prepare for wet weather by having the Respondent provide alternate disposal areas within the site nearer to the entrance, or stockpiling cover close to the operating fill face, or saving the highest ground of the land fill for wet weather operations. Similarly, the Respondent shall develop a program to stockpile cover so that machinery can dig into it during freezing conditions. Additionally, the Respondent shall develop a plan to control litter by using several active areas in a leeward position from the prevailing winds so as to cut down on the wind's force and to minimize the blowing of litter.

IT IS SO ORDERED.

Chairman J. D. Dumelle dissents.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board hereby certify that the above Opinion and Order was adopted on the 8th day of November, 1984 by a vote of 5-1.

Dorothy M. Gunn
Dorothy M. Gunn, Clerk
Illinois Pollution Control Board