

ILLINOIS POLLUTION CONTROL BOARD
October 5, 1995

COUNTY OF WILL,)
)
 Complainant,)
)
 v.) AC 94-98
) AC 95-1
) AC 95-2
 CDT LANDFILL CORP.,) (Administrative Citation)
) (WC 94AC2, WC 94AC3, WC 94AC5)
 Respondents.)

MS. CYNTHIA CAMPBELL, ASSISTANT STATE'S ATTORNEY, APPEARED ON BEHALF OF COMPLAINANT;

SCOTT HOSTER, APPEARED ON BEHALF OF RESPONDENT.

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

On December 5, 1994 and January 3, 1995 the County of Will (County), pursuant to authority delegated to the County under Section 4 of the Environmental Protection Act (Act) by the Illinois Environmental Protection Agency (Agency), filed three administrative citations pursuant to Section 31.1 of the Act. (415 ILCS 5/4 and 5/31.1 (1994).) The first citation filed on December 5, 1994, docketed as AC 94-98, alleges that CDT Landfill Corp. (CDT Landfill) violated Section 21(o)(9) of the Act. (415 ILCS 5/21(o)(9) (1994).) On January 3, 1995, the County filed two separate administrative citations, docketed as AC 95-1 and 95-2 alleging violations Sections 21(o)(9) and 21(o)(11) of the Act, respectively. (415 ILCS 5/21(o)(11) (1994).) The Clerk of the Board received three requests for review of the administrative citations on January 11, 1995, February 6 and 7, 1995 filed by the CDT Landfill.

The Board consolidated these matters for the purpose of hearing. The hearing was held before Chief Hearing Officer Michael L. Wallace on March 10, 1995, in Joliet, Will County, Illinois. No members of the general public made a statement at hearing. No briefs were filed in this matter. The Board will also consolidate these matters for the purpose of decision.

For the reasons below, the Board finds CDT Landfill in violation of Section 21(o)(11) of the Act as alleged in AC 95-2 for failing to file its annual report and in violation of Section 21(o)(9) of the Act as alleged in AC 95-1 for placing waste in an unpermitted area of the landfill. The Board finds that CDT landfill is not in violation of Section 21(o)(9) of the Act as alleged in AC 94-98.

BACKGROUND

CDT Landfill is the present operator of a facility located in Will County, Illinois. The facility is operated as a sanitary landfill under an Agency operating permit No. 1992-083-LF and designated as site code NO. 1978170006. The facility is commonly known to the Agency as CDT Landfill. (AC at 1.)¹

On November 23, 1994, Mr. Narayan Kedare, a County inspector and Mr. Lou Arrigoni P.E. and Mr. John Lazzara P.E. (both of HDR Engineering, a consulting firm) inspected the facility. Based on the November 23, 1994 inspection, the County issued two separate administrative citations alleging violation of Sections 21(o)(9) and (o)(11) of the Act, respectively. (AC 94-98, AC 95-2.)

On December 15, 1994, Mr. Frank Kalisik, a County inspector, inspected the facility. Based on the December 15, 1994 inspection, the County issued another administrative citation alleging violation of Section 21(o)(9) of the Act. (AC 95-1.)

FACTS

Prior to the issuance of the administrative citations Mr. Kalisik inspected the site on three previous occasions, September 13 and 20, 1994, and October 26, 1994. (Tr. at 122-125.) During those inspections Mr. Kalisik discussed with CDT Landfill personnel his belief that the waste material was above the permitted elevations and that a survey control (a stake placed at a certain location that has an elevation marker attached) was needed at the site where activity was taking place. (Tr. at 126-127.) After a November 9, 1994 inspection by Mr. Kalisik, who observed no survey control, the County determined that a survey should be conducted at the site. (Tr. at 132-133.) This survey was conducted by HDR Engineers on November 23, 1994. (Tr. at 133.)

On November 23, 1994, Mr. Kedare, Mr. Arrigoni and Mr. Lazzara inspected the site. Mr. Arrigoni and Mr. Lazzara were hired by the County to perform a survey to estimate the height of the landfill. (Tr. at 9, 31.) Using the established bench marks² they started to survey the site using a level and a

¹ The filed administrative citations will be referenced as "AC. at ", and transcript will be referenced as "Tr. at ", and the complainant's exhibits will be referred to as "Comp. Ex. " and respondents exhibits will be referred to as "Resp. Ex. ".

²Bench Mark is a definite point of known elevation and location and of more or less permanent character. The bench marks used by the County's consultants are groundwater monitoring wells whose elevations are indicated in the development plan.

ranging rod. (Tr. at 12-14.) Utilizing this surveying method they estimated elevations at five (5) points on the landfill slope. (Tr. at 14-24, Comp. Ex. #4.) The first two estimated points of elevation were located on top of a haul road with estimated heights of 639.93 ft and 641 ft. (Tr. at 19-20, Comp. Ex. #4.) The other three points of estimated elevation were located 30 to 50 ft east of the haul road. (Tr. at 23-24, Comp. Ex. #4.) The estimated elevations for those locations are 644.44 ft, 644.24 ft and 644.10 ft. (Tr. at 23, Comp. Ex. #4.) All the points of estimated elevations were located in trenches 2 and 4. (Comp. Ex. #5.) According to the development plan, this area of the landfill lies between final contours of 632 ft and 634 ft. (Comp. Ex. 1.) However, Mr. Arrigoni could not state the actual elevation of the waste at the estimated points of elevation. (Tr. at 32.)

Mr. Kedare testified that the development plan established the contours and elevations "beyond which the site is not supposed to go." (Tr. at 57.) Mr. Kedare stated further that after allowing for final cover the highest point for the refuse to be placed between the contours of 632 ft and 634 ft is 628 ft. (Tr. at 62-64.) Mr. Kedare also stated that no final cover was in place. (Tr. at 64.) However, Mr. Kedare, like Mr. Arrigoni, could not state the depth of the cover that was in place or the height of the waste at those points. (Tr. at 64-65.) Mr. Kedare believes, based on the survey and development plan, that CDT Landfill was in violation for placing waste in an unpermitted area of the landfill. (Tr. at 75-76.)

As stated previously, Mr. Kalisik inspected the site on December 15, 1995. Based on his observations of that day and the HDR survey, Mr. Kalisik felt that CDT Landfill had not corrected the problem of waste being placed above the final contours. (Tr. at 135-136.) In addition Mr. Kalisik observed active filling taking place in trenches 3 and 6 of the site. (Tr. at 136.) Mr. Kalisik observed a large mound of refuse deposited and compacted with daily cover being applied. (Tr. at 136.) Mr. Kalisik used leachate manhole No. 4 as the nearest survey control to make his determination. (Tr. at 137.) Based on the development plan (Comp. Ex. 1), Mr. Kalisik noted that the elevation of the rim of manhole No. 4 to be 635.50 ft. (AC 95-1 at 3.) Further, he determined by using a measuring stick that the rim was approximately 6 ft above the landfill surface. (Tr. at 139.) Mr. Kalisik testified that the 6-foot distance from the landfill surface to the rim of the manhole is to accommodate the placement of the final cover. (Tr. at 139-140.) In addition, Mr. Kalisik observed looking north that the contour elevation increased significantly, equaling the height of a large commercial truck. (Tr. at 143-153, AC 95-1 at 3.) Mr. Kalisik presented photographs taken in the vicinity of manhole No. 4 to show the overfilled area. (Comp. Ex. #7, #8, #9 & #10.) Since the development plan does not show any higher elevations north of the

survey control, the County alleges that CDT Landfill deposited waste in an unpermitted portion of the landfill. In addition, Mr. Kalisik testified that there was space available in trench #6, but not in trench #3. Mr. Kalisik also testified that none of the areas had final cover in place and that all his statements, that the landfill is over the height of the final contours, are based on his visual observations. Finally, Mr. Kalisik could not state the elevation of the waste. (Tr. 159-161.)

CDT Landfill presented one witness, Mr. Douglas Andrews, a licensed professional engineer who has been a consulting engineer for landfills for several years. (Tr at 175-180.) Mr. Andrews testified that the survey was not accurate and, more specifically, was not accurate for determining the height since the survey only estimated the elevation of the cover over the refuse. (Tr. at 182-183.) Additionally, Mr. Andrews stated that in some instances it may be desirable to fill refuse higher than the final contours to allow for settlement. (Tr. at 184.) Mr. Andrews also testified concerning two regulations: 35 Ill. Adm. Code 811.104 which requires landfills to be resurveyed every five years, and 35 Ill. Adm. Code 811.105 which requires landfills to achieve the highest density possible. (Tr. at 185-186.) Mr. Andrews believes the result of these regulations is that a landfill operation may place refuse over height to achieve those requirements and in acknowledgement that a landfill will settle. (Tr. at 186-187.) Mr. Andrews believes that the landfill did not violate its permit because "the contour elevations shown on the design plans are the elevations of the final cover and they will have to conform with the elevations when they apply the final cover, but that hasn't happened yet." (Tr. at 189.)

Concerning the alleged violation of Section 21(o)(11) of the Act, the parties at hearing stipulated that the annual report was not filed by May 1, 1994. (Tr. at 76.) In addition CDT landfill filed two letters to the Agency requesting an extension of time to file the annual report. (Resp. Ex. #1 and #2.) The last requested extension by CDT landfill ended July 31, 1994. (Resp. Ex. #2.) The parties also stipulated that the annual report was filed on March 2, 1995. (Tr. at 76.)

APPLICABLE LAW

The administrative citations issued against respondent allege violations of subsections (9) and (11) of Section 21(o) of the Act. In pertinent part, Section 21(o) provides that no person shall conduct a sanitary landfill operation in a manner which results in:

9. deposition of refuse in any unpermitted portion of the landfill;

* * *

11. failure to submit reports required by permits or Board regulations;

(415 ILCS 5/21(o)(9) and (12).)

Pursuant to Section 31.1(d)(2) of the Act, the County bears the burden of proof in this case. (415 ILCS 5/31.1(d)(2) (1994).) Also, pursuant to Section 31.1(d)(2) of the Act, if the Board finds that the alleged violation occurred, then the final order issued shall include a finding of violation, and shall impose the penalty of \$500 per violation as specified in subsection (b)(4) of Section 42 of the Act. (415 ILCS 5/42 (1994).)

ARGUMENTS

Section 21(o)(11)

The County argues that compliance after the fact is no defense to a administrative citation and therefore CDT Landfill is in violation of Section 21(o)(11) of the Act for failing to submit the annual report on May 1, 1994. After July 31, 1994, the date of the last requested extension, there was no further requests and the report was not filed until March 1, 1995.

CDT Landfill admits that it has failed to submit the annual report when it was due. However, CDT Landfill claims that it was in the process of acquiring the proper form for submitting the information from the Agency and requested two extensions of time to file such report, the last extension being until July 31, 1994. Additionally, CDT Landfill asserts that it was waiting to secure a significant modification before filing the annual report. For these reasons CDT Landfill argues that the Board should not find a violation.

Section 21(o)(9)

The County argues that the development plan (Comp. Ex. #1) in conjunction with the operating permit (Comp. Ex. #6) establishes an elevation limitation for disposal of refuse during operation and upon final closure. The County asserts that the points at which elevations were estimated are located in an area, according to the development plan, where the final contour elevations are between 632 ft and 634 ft. Considering the accuracy of the estimations, the height of the landfill at those points is approximately 10 ft above the permitted contour. The County concludes that even if 6 ft of final cover was in place the County concludes that the waste is above 632 ft and 634 ft and, therefore, located in an unpermitted area of the landfill.

Additionally, the County asserts that the observations of Mr. Kalisik demonstrate that the CDT Landfill failed to correct the problem and that the waste in trench 3 is also above the height limitation and therefore is in violation of Section 21(o)(9) of the Act.

CDT Landfill argues that the County has not carried its burden of proof. CDT Landfill states that the County by the admissions of its own employees that they do not know how high the refuse actually is, failed to prove that the refuse has been placed in an unpermitted area. Furthermore, CDT Landfill asserts that the County admits the estimated height elevations are rough at best. CDT Landfill also argues that even if the Board were to find that it was in fact over the height limitations set forth in the development plan the landfill is still operation and those limitations do not apply. CDT Landfill argues that the height limitation applies only at final closure and that the permit itself does not contain any limitations during the operation of the landfill.

DISCUSSION

Section 21(o)(11)

CDT Landfill admits to not filing the annual report with the Agency as required and argues several reasons why it did not file the report, none of which are uncontrollable circumstances. Since uncontrollable circumstances are the only defense to an administrative citation violation, we find that CDT Landfill violated Section 21(o)(11) of the Act.

Section 21(o)(9)

The Board has previously found a violation of Section 21(o)(9) of the Act where a landfill placed waste above height limitations. (See Logan County Health Department v. Lincoln\Logan Landfill, (July 1, 1993), AC 92-50.) We find that the final contours as depicted on the development plan, which is part of the permit issued by the Agency, limits the height of the landfill not only at final closure but also during operation of the landfill. As noted in the operating permits issued by the Agency in this matter the operating permit refers to the trench markings and waste footprints, the two dimensional boundaries, as stated on the development plan as if it was part of the operating permit. The Board has found that waste placed outside of the waste footprint during operation of the landfill to be in violation of Section 21(o)(9) of the Act. (See Illinois Environmental Protection Agency v. City of Herrin, (December 6, 1989), AC 88-93.) We find no reason to treat the three dimensional boundary or the height limitations as set forth in the development plan any differently. The height limitations serve several purposes which are important during the operation

as well as at final closure of the landfill such as structural integrity of the mound. Additionally, the operating permit does not allow for CDT Landfill to operate the landfill above the height limitations. Therefore the height limitation for final contours are limitations that apply during the operation of the landfill as well as at final closure.

Given the above case precedent, we find that based on the record before the Board, with regard to the allegation in AC 95-1, that CDT Landfill was in violation of Section 21(o)(9) of the Act based on the December 15, 1994 inspection. Based on the record, Mr. Kalisik's testimony and photographs (Comp. Ex. #8, #9 and #10), which were not challenged by respondent, the waste was deposited above the height limitations which constitutes a violation of Section 21(o)(9) of the Act. Having found that the violations occurred and since CDT Landfill does not argue uncontrollable circumstances, the Board also finds that the violations were not a result of uncontrollable circumstances.

Based on the record before us, the Board finds that CDT Landfill was not in violation of Section 21(o)(9) of the Act based on the November 23, 1994 inspection which led to the filing of AC 94-98. Although we believe that the survey done by the County was sufficiently accurate to determine the elevation of the landfill on that particular day, the County could not testify that waste was at a certain elevation. The burden is on the County to demonstrate that the waste was being placed above the elevation limitations. In the administrative citation process the complainant must demonstrate, based on the record, that there was a violation. In this case the County has not satisfied its burden of proof. The Board cannot determine that there was a violation without making the assumption that the cover was not 10 ft to 12 ft thick. Therefore we find that the County has failed to demonstrate that the waste has been placed in an unpermitted area of the landfill.

CONCLUSION

The Board finds that the County has demonstrated that CDT Landfill violated Sections 21(o)(9) and (o)(11) of the Act as alleged in AC 95-1 and AC 95-2 and that these violations were not the result of uncontrollable circumstances. Additionally, the Board finds that CDT Landfill did not violate Section 21(o)(9) of the Act as alleged in AC 94-98.

PENALTY AND COSTS

Penalties in administrative citation actions are prescribed by Section 42(b)(4) of the Act which states:

In an administrative citation action under Section 31.1 of this Act, any person found to have violated any

provision of subsection (p) of Section 21 of this Act shall pay a civil penalty of \$500 for each violation of each such provision, plus any hearing costs incurred by the Board and the 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, as amended;

(415 ILCS 5/42(b)(4) (1992).)

In the Board's final order in this case, respondent will be ordered to pay a civil penalty of \$1,000 based on the violation as found. Further, pursuant to Section 42(b)(4) of the Act, respondent is also required to pay hearing costs incurred by the Board and the County. Those costs are not contained in the record at this time. Therefore as part of this interim order, the Clerk of the Board and County are ordered to each file a statement of costs, supported by affidavit, with the Board and with service upon respondent.

This interim opinion constitutes the Board's interim findings of fact and conclusions of law in this matter. A final order will be issued pursuant to the interim order which follows.

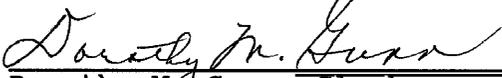
INTERIM ORDER

1. Respondent, CDT Landfill, is hereby found to have violated 415 ILCS 5/21(o)(9) and (o)(11) (1994) on December 15, 1994 and November 23, 1994, respectively.
2. The County of Will is hereby directed to file a statement of its hearing costs, supported by affidavit, with the Board and with service on the respondent, CDT Landfill, Inc., within 14 days of service of this order. Within the same 14 days, the Clerk of the Pollution Control Board shall file a statement of the Board's costs, supported by affidavit and with service upon the respondent, CDT Landfill, Inc.
3. Respondent, CDT Landfill, Inc., is hereby given leave to file a reply to the filings ordered in paragraph 2 within 14 days of receipt of that information, but in no case later than 40 days after the date of this order.
4. After the deadline for filing such information and reply thereto has expired, the Board will issue a final order assessing the statutory penalty, and making the appropriate award of costs.

IT IS SO ORDERED.

Board member J. Theodore Meyer dissented.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above interim opinion and order was adopted on the 5th day of October, 1995, by a vote of 6-1.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board