

ILLINOIS POLLUTION CONTROL BOARD
July 7, 1995

PEOPLE OF THE STATE OF ILLINOIS,))
))
Complainant,))
))
v.)) PCB 93-248
)) (Enforcement-Land)
JOHN PRIOR AND INDUSTRIAL))
SALVAGE, INC.,))
))
Respondents.))

THOMAS DAVIS, ASSISTANT ATTORNEY GENERAL, AND JAMES GREG RICHARDSON, ASSISTANT COUNSEL, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, APPEARED ON BEHALF OF COMPLAINANT;

WILLIAM J. BECKER, ESQ., OF HEYL, ROYSTER, VOELKER & ALLEN, APPEARED ON BEHALF OF RESPONDENT.

OPINION AND ORDER OF THE BOARD (by G. T. Girard):

This matter comes before the Board on the December 8, 1993, complaint of the Attorney General, filed on behalf of the People of the State of Illinois (People or complainant), and at the request of the Illinois Environmental Protection Agency (Agency). The complaint alleges that respondents Industrial Salvage, Inc. and John Prior (collectively referred to as respondents) have violated Sections 12(a), (d), 21(d), (o) and 21.1(a) of the Illinois Environmental Protection Act (Act); and the Board's waste disposal regulations in 35 Ill. Adm. Code 807.318, 807.502, 807.506, 807.508, 807.623(a)(b)(c), and 807.663(a) at three landfills. The landfills are located on three adjacent properties near Centralia, Marion County, Illinois, and are known as the Centralia/Prior site, the Prior/Blackwell site, and the Industrial Salvage site. The People's complaint details the violations in five counts described below.

Hearing is mandatory pursuant to Section 33 of the Act and was held on August 29, 1994, before Board Hearing Officer John Hudspeth. Members of the public were in attendance, and one public member presented testimony. At hearing, respondents offered into the record of the instant case, the record and hearing transcript of a previous Board case PCB 93-60 and PCB 93-61 (Industrial Salvage, Inc. and John Prior v. Illinois Environmental Protection Agency, PCB 93-60, PCB 93-61, Consol., — PCB — (February 17, 1994) herein after cited as Prior v. IEPA). (Tr. at 206-207.)¹ On September 12, 1994, the parties

¹ The hearing transcript will be cited as "Tr. at ____". The complaint will be cited as "Comp. at ____". The complainant's

filed a joint stipulation of admissibility for certain chemical analysis forms. Complainant's Brief was filed on October 31, 1994. Respondents' Brief was filed on February 8, 1995. Complainant's Reply Brief was filed on February 22, 1995.

For the reasons given below, the Board finds that John Prior violated the Act and Board regulations as alleged in Counts II, III, IV and V of the complaint. In Count I of the complaint, the Board finds violation, by John Prior, on all allegations except the Board did not find a violation of 35 Ill. Adm. Code 807.663(a). The Board finds Industrial Salvage, Inc., violated the Act and Board regulations as alleged in Counts IV and V of the complaint. The Board orders that respondents immediately comply with the Act and Board regulations and that respondents cease and desist from future violations. The Board does not impose a monetary penalty in this case. The Board orders that the three landfills be closed and that the development permit for the Industrial Salvage site be revoked.

PRELIMINARY MATTERS

The Board has not yet ruled on the April 29, 1994, respondents' motion for "Enlargement of Time in Which to File a Response to Request For Admission" (hereinafter April 29, 1994 motion) which accompanied the response to the request to admit facts (attached to said motion as "Exhibit A"). Respondents' motion was filed in response to the People's March 24, 1994 request to admit facts. Respondents explained that they needed additional time because they mistakenly believed that they had 28 days to file their response, rather than the 20 days required by Board rule at 35 Ill. Adm. Code 103.162. On May 9, 1994, complainant filed the People's response to the April 29, 1994 motion which posited that since respondents had failed to comply with the 20-day response requirement at 35 Ill. Adm. Code 103.162, the complainant had thereby obtained admissions by default of each of the matters of fact within the request to admit facts. The People filed with the Board a second request to admit facts on May 18, 1994. Respondents filed a timely answer to the second request to admit facts on June 6, 1994. At hearing, the People requested that the Board rule on the outstanding April 29, 1994, motion by respondents for additional

brief will be cited as "Comp. at ____". The complainant's brief will be cited as "Comp. Br. at ____". The complainant's reply brief will be cited as "Comp. RBr. at ____". The respondent's brief will be cited as "Res. Br. at ____". Complainant's exhibits will be cited as "Comp. Exh. ____". The facts in the first request to admit facts and first response to admit facts will be cited as "First Facts at par. ____". The facts in the second request to admit facts and second response to admit facts will be cited as "Second Facts at par. ____".

time to file the first response to the People's first request to admit facts. (Tr. at 20.) At hearing the People stated "that the answers to the first request to admit were, in fact, generally responsive, and it was on that basis that we filed a second request to admit, and those answers were responsive as well". (Tr. at 20.) The People's statement at hearing shows that no prejudice will result by granting the April 29, 1994 motion. Therefore, the Board will hereby grant respondents' April 29, 1994, motion for enlargement of time in which to file a response to request for admission.

FACILITY AND PERMIT DESCRIPTIONS

The three adjacent landfills are located south of Centralia on Perrine Street Road, just north of County Line Road in Marion County. (Tr. at 81.) The three landfills have the following Agency designation numbers: Centralia/Prior (#1218020006); Prior/Blackwell (#1218020002); and Industrial Salvage (#1214220003). (Comp. at 2.)

John Prior is the owner of the Centralia/Prior site. (First Facts at par. 5.) The Centralia/Prior site operated under original development permit No. 1975-37-DE (Tr. at 85) which was issued on May 22, 1975 to John Prior. (Comp. at 2.) A closure plan for the Centralia/Prior site was approved by the Agency in September 1986 by permit No. 1986-098-SP. (Comp. Exh. 1; Tr. at 83; Comp. at 2.) The approved cost estimate for closure/post-closure care is \$46,260.44. (Comp. at 2.) Permit No. 1986-098-SP also transferred the operational responsibilities for the Centralia/Prior site from John Prior to Jackson County Landfill d/b/a Industrial Services, Inc. (Comp. Exh. 1.) No waste disposal operations have been conducted at the Centralia/Prior site subsequent to June 1987. (Second Facts at par. 9.)

John Prior is the owner of the Prior/Blackwell site. (First Facts at par. 6.) The original operating permit for the Prior/Blackwell site was No. 1981-14-OP, issued on October 31, 1981, to John Prior and to Johnson and Winifred Blackwell. (Comp. at 2.) The Agency approved a closure/post-closure care plan for the Prior/Blackwell site in September 1986 by permit No. 1986-105-SP. (Comp. Exh. 2; Tr. at 83.) The approved cost estimate for closure is \$29,009.16. (Comp. at 2.) Permit No. 1986-105-SP also transferred the operational responsibilities for the Prior/Blackwell site from John Prior to Jackson County Landfill d/b/a Industrial Services, Inc. (Comp. Exh. 2.) No waste disposal operations have been conducted at the Prior/Blackwell site since June 1987. (Second Facts at par. 9.)

The Centralia/Prior and Prior/Blackwell sites received final cover during the summer of 1988. (Tr. at 102.) However, official certification of closure has not been issued. (Tr. at 103.)

The Industrial Salvage site is owned by John Prior and Industrial Salvage, Inc. (First Facts at par. 7,8.) John Prior is the President of Industrial Salvage, Inc. (First Facts at par. 4.) The original development permit (No. 1984-3-DE) for the Industrial Salvage site was issued by the Agency on February 9, 1984, (Comp. Exh. 3; Tr. at 83-84) to Industrial Salvage, Inc. and John Prior. (Comp. at 2.) On September 26, 1986, the operating rights for the Industrial Salvage site were transferred, by permit No. 1986-104-SP, from respondents to Jackson County Landfill, Inc., d/b/a Industrial Services, Inc. (Jeffrey Pauline, President). (Comp. at 3.) Respondents admit operating the Industrial Salvage site until June 1985. (Second Facts at par. 1,2.) John Prior retained ownership of the property. (Comp. at 2.) On March 21, 1988, the operating rights for the Industrial Salvage site were transferred by permit No. 1987-299-SP (Comp. Exh. 4; Tr. at 84) from Jackson County Landfill, Inc. d/b/a Industrial Services, Inc. (Jeffrey Pauline, President) to Centralia Environmental Services, Inc. (W.T. Schmidt, President). (Comp. Exh. 4.) The name of the landfill changed from Industrial Salvage Landfill to Centralia Environmental Landfill. (Comp. Exh. 4.) John Prior retained ownership of the property. (Comp. Exh. 4.)

Centralia Environmental Services submitted cost estimates for closure/post-closure care of the Industrial Salvage site. The closure/post-closure cost estimate of \$81,346.25 for the Industrial Salvage site was approved in Permit No. 1987-299-SP. (Comp. Exh. 4; Comp. at 3.) Permit No. 1987-299-SP for the Industrial Salvage site also included, as a condition, an approved remediation plan for wastes deposited below the liner in violation of Board regulations. (Comp. Exh. 4.) Condition 2 of the permit required that the remediation project was to be completed by September 15, 1988. (Comp. Exh. 4.) A trench in Area 4 was the subject of said remedial project. (Tr. at 109-110.)

In 1989, John Prior filed suit in Marion County Circuit Court (Case Number 89-L-107) against Centralia Environmental Services, Inc., and W.T. Schmidt, and other parties, to recover damages and all rights, title and interest to the real property comprising the Industrial Salvage site. (First Facts at par. 22.) Waste disposal operations ceased at the Industrial Salvage site shortly before the issuance of a preliminary injunction (Marion County Court Case Number 89-CH-4) against Centralia Environmental Services, Inc., and W.T. Schmidt on December 12, 1989. (First Facts at par. 21; Tr. at 95.)

No waste has been disposed at the Industrial Salvage site since December 12, 1989. (Second Facts at par. 3.) Refuse previously deposited at the Industrial Salvage site has been uncovered since 1990. (First Facts at par. 32.) The entire length of the south wall of Area 1 was uncovered as of Summer

1992. (Tr. at 111, Comp. Exh. 8, Comp. Exh. 12.) Prior was awarded title and interest in the Industrial Salvage site by the Marion County Circuit Court (Case Number 89-L-107) on August 20, 1992. (First Facts at par. 22.) John Prior placed some cover on Areas 1, 2, and 3 of the Industrial Salvage site in July-August of 1992. (Tr. at 110-111, 166, 190.) Mr. Ken Mensing, Regional Manager of the Agency's Collinsville office, inspected the Industrial Salvage site on October 1992, and reported that "topographically it looked good...". (Tr. at 166.)

On January 13, 1993, Mr. Mensing again inspected the Centralia/Prior and Prior/Blackwell sites. (Tr. at 145, 179.) Mr. Mensing walked along the eastern boundary of the two sites, and observed washouts, erosion, and suspected leachate drippage. (Tr. at 179.) Mr. Mensing contacted Mr. Prior the next day and reported his observation of conditions at the sites. (Tr. at 180.) At the immediate subsequent re-inspection, one of Mr. Mensing's inspectors observed that dirt has been brought into the site to fill in the erosion areas. (Tr. at 180.) Mr. Mensing testified that John Prior performed work at the Centralia/Prior and Prior/Blackwell sites in January 1993. (Tr. at 180, 188.) Mr. Mensing testified that John Prior "responded quickly and did an adequate job". (Tr. at 180.)

On February 10, 1993, the Agency denied prior conduct certification to John Prior and on February 11, 1993, the Agency denied an operating permit to Industrial Salvage, Inc., for Area IV of the Industrial Salvage site.² (Prior v. IEPA, 1994.) Area IV of the Industrial Salvage site is an integral part of the entire landfill. The design of this particular landfill is such that each area of the landfill is dependent upon development of other areas for its performance. Area IV will be part of one large mound when filled to capacity, unlike other landfills which may include operating areas that are separate and distinct when filled to capacity. (Prior v. IEPA, 1994, p. 3.) The Board affirmed the Agency's February 10, 1993, denial of prior conduct certification to Prior and affirmed the February 11, 1993, denial

² As previously stated, at hearing respondents offered into the record of the instant case the record and hearing transcript of Prior v. IEPA. This consolidated case before the Board was an appeal by respondents of an Agency permit denial for John Prior and Industrial Salvage pertaining to Area IV of the Industrial Salvage site. The Board previously adjudicated an earlier appeal of a denial of supplemental development and operating permits for this site. (Centralia Environmental Services v. IEPA (October 25, 1990), PCB 89-170, 115 PCB 389.) In that matter the Board affirmed the Agency's denial of the supplemental permits, but found that some of the denial reasons given by the Agency were insufficient basis for permit denial. (*Id.* at 20, 408.)

of operating permit to Industrial Salvage by Board Order on February 17, 1994. (*Id.* p. 9.)

In October 1993, John Prior and Industrial Salvage, Inc., filed bankruptcy petitions in the United States Bankruptcy Court for the Southern District of Illinois (Case Numbers 93-40768 and 93-40767, respectively). The bankruptcy petition for Industrial Salvage, Inc. is attached as Exhibit A to Respondent's Brief.

Mr. Mensing visited the site on December 6, 1993, to collect water samples, which, when tested, contained indicator chemicals for leachate, such as aliphatic acid. (Tr. at 194; Comp. Exh. 7.) Mr. Mensing also observed ponded water and suspected leachate. (Tr. at 181.) Mr. Mensing detailed his observations in a letter to John Prior and followed up with a phone conversation. (Tr. at 181.) Mr. Prior expressed some concerns about legalities of operating on the site, and Mr. Mensing followed up with an additional letter within a week with more detail and guidance on how to deal with the site problems. (Tr. at 181.) No subsequent activity occurred at the sites in response to the second letter. (Tr. at 181-182.)

On March 2, 1994, Mr. Mensing reinspected the sites and made a videotape of conditions. (Tr. at 156; Comp. Exh. 8.) The videotape was shown at the hearing and narrated testimony was offered by Mr. Mensing. (Tr. at 157-176.) During the March 2, 1994, inspection, Mr. Mensing observed suspected leachate entering or threatening to enter Webster Creek. (Tr. at 174-176.) Mr. Mensing also testified that he observed unburied refuse along a vertical wall of the Industrial Salvage site which could intercept precipitation to form leachate or serve as an exit point for leachate produced within the landfill. (Tr. at 157-161.) Mr. Mensing further testified that he observed gaseous emissions from the Centralia/Prior site which smelled typical of decomposing trash (Tr. at 171-173) and extensive areas of ponded water on the Prior/Blackwell site. (Tr. at 173-174.)

COMPLAINT

Count I

Count I alleges that respondents have failed to timely submit a biennial review of the closure and post-closure care plans for the Centralia/Prior and Prior/Blackwell sites, and thereby failed to revise the current cost estimates and to update financial assurance. Therefore, respondents have allegedly violated Section 21(d)(1) of the Act by failing to timely submit a biennial review to the Agency as required by their permits. (Comp. at 6; Comp. Br. at 1-2.) Respondents have allegedly violated Section 21.1(a) of the Act (415 ILCS 5/21.1(a)), and Board regulations at 35 Ill. Adm. Code 807.623 and 807.663, by failing to revise the current cost estimate and provide adequate

financial assurance for post-closure care at the two sites.
(Comp. at 6; Comp. Br. at 1-2.)

Count II

Count II alleges that respondents have failed to close the Centralia/Prior and Prior/Blackwell pursuant to 35 Ill. Adm. Code 807.502, which requires said sites to be closed in a manner which minimizes the need for further maintenance and controls, and minimizes or eliminates post-closure releases. (Comp. at 9; Comp. Br. at 2.) Respondents have allegedly failed to submit to the Agency the plan sheets and affidavits required by 35 Ill. Adm. Code 807.508(a). (Comp. at 9; Comp. Br. at 2.) Complainant alleges that respondents are in violation of Section 21(d)(2) of the Act (415 ILCS 5/21(d)(2)) because of the continuing failure by respondents to complete and document closure of the Centralia/Prior and Prior/Blackwell sites. (Comp. at 9; Comp. Br. at 2.) In addition, respondents have allegedly failed to implement the closure and post-closure care plans for these two sites as required by the 1986 site permits in violation of Section 21(d) of the Act (415 ILCS 5/21(d)(1)).

Count III

Count III alleges that respondents have violated Section 12(a) and (d) of the Act (415 ILCS 5/12(a) and (d)) which prohibits actual or potential water pollution in Illinois. By failing to complete closure of the Centralia/Prior and Prior/Blackwell sites, as required by the permits, closure and post-closure care plans, and 35 Ill. Adm. Code 807.502, respondents have allegedly caused, allowed, or threatened water pollution from leachate flows which have discharged or posed a hazard of discharging from the sites into waters of the state. (Comp. at 12; Comp. Br. at 2-3.)

Count IV

Count IV alleges that respondents violated Section 21(d)(1) of the Act (415 ILCS 5/21(d)(1)) by not completing remediation of wastes placed below the liner at the Industrial Salvage site. (Comp. at 15; Comp. Br. at 3.) Condition 2 of Permit No. 1987-299-SP of the Industrial Salvage site required that the remediation be complete by September 15, 1988. (Comp. Exh. 4.) Count IV also alleges that respondents have failed to initiate closure of the Industrial Salvage site as required by 35 Ill. Adm. Code 807.506. (Comp. at 14; Comp. Br. at 3.) The People allege that respondents have abandoned the Industrial Salvage site during and subsequent to January 1990, and have failed to close the site according to 35 Ill. Adm. Code 807.502. Section 807.502 requires sites to be closed in a manner which minimizes the need for further maintenance and controls, and minimizes or eliminates post-closure releases. (Comp. at 14; Comp. Br. at 3.)

The People allege that the failure of respondents to close the Industrial Salvage site as required by Board regulations is a violation of Section 21(d)(2) of the Act (415 ILCS 5/21(d)(2)). (Comp. at 15; Comp. Br. at 3.)

Count V

Count V alleges that respondents have: failed to monitor the Industrial Salvage site and to take necessary remedial action regarding gas, water, or settling problems in violation of 35 Ill. Adm. Code 807.318; failed to complete the closure of the site as required by the permit, the closure and post-closure care plan, in violation of 35 Ill. Adm. Code 807.502; and caused, allowed, or threatened water pollution in that leachate flows from the site have discharged or posed a hazard of discharging in the water of the state in violation of Section 12(a) and (d) of the Act (415 ILCS 5/12(a) and (d) because the Industrial Salvage site has not been properly closed. (Comp. at 17; Comp. Br. at 3-4.)

STATUTORY AND REGULATORY BACKGROUND

Section 12 of the Act

Sections 12(a) and (d) of the Act provide in pertinent part:

No person shall:

- a. Cause or threaten or allow the discharge of any contaminants into the environment in any State so as to cause or tend to cause water pollution in Illinois, either alone or in combination with matter from other sources, or so as to violate regulations or standards adopted by the Pollution Control Board under this Act;
- ***
- d. Deposit any contaminants upon the land in such place and manner so as to create a water pollution hazard;
(415 ILCS 5/12)

Section 21 of the Act

Section 21(d) and (o) of the Act provide in pertinent part:

No person shall:

- d. Conduct any waste storage, waste-treatment, or waste-disposal operation:
 - 1. Without a permit granted by the Agency or in violation of any conditions imposed by such permit..., or

2. In violation of any regulations or standards adopted by the Board under this Act;

- o. 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:

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

 13. failure to submit any cost estimate for the site or any performance bond or other security for the site as required by this Act or Board rules. (415 ILCS 5/21.)

Section 21.1 of the Act

Section 21.1(a) of the Act provides:

- a. Except as provided in subsection (a.5) no person other than the State of Illinois, its agencies and institutions, or a unit of local government shall conduct any waste disposal operation on or after March 1, 1985, which requires a permit under subsection (d) of Section 21 of this Act, unless such person has posted with the Agency a performance bond or other security for the purpose of insuring closure of the site and post-closure care in accordance with this Act and regulations adopted thereunder.
- a.5 On or after April 9, 1995 no person, other than the State of Illinois, its agencies and institutions, shall conduct any disposal operation at a MSWLF unit that requires a permit under subsection (d) of Section 21 of this Act, unless that person has posted with the Agency a performance bond or other security for the purposes of:
 1. insuring closure of the site and post-closure care in accordance with this Act and its rules; and
 2. insuring completion of a corrective action remedy when required by Board rules adopted under Section 22.40 of this Act or when required by Section 22.41 of this Act.

35 Ill. Adm. Code 807.104

"Owner" means a person who has an interest, directly or indirectly, in land, including a leasehold interest, on which a person conducts a waste treatment, waste storage or waste disposal operation. The "owner" is the "operator" if there is no other person who is conducting a waste treatment, waste storage or waste disposal operation.
[emphasis added]

35 Ill. Adm. Code 807.318

Section 807.318, Completion or Closure Requirements, provides:

- a) The owner or operator of a sanitary landfill site shall monitor gas, water and settling at the completed site for a period of three years after the site is completed or closed.
- b) The owner or operator shall take whatever remedial action is necessary to abate any gas, water or settling problems which appear during the three year period.
- c) The owner or operator shall, upon completion or closure, file a detailed description of the site, including a plat, with the appropriate county land recording authority for the county in which the site is located.

35 Ill. Adm. Code 807.502

Section 807.502, Closure Performance, states:

In addition to the specific requirements of this Part, an operator of a waste management site shall close the site in a manner which:

- a) Minimizes the need for further maintenance; and
- b) Controls, minimizes or eliminates post-closure release of waste, waste constituents, leachate, contaminated rainfall, or waste decomposition products to the groundwater or surface waters or to the atmosphere to the extent necessary to prevent threats to human health or the environment.

35 Ill. Adm. Code 807.506

Section 807.506, Initiation of Closure, provides:

- a) An operator of a waste management site shall initiate the treatment, removal from the site or disposal of all wastes and waste residues other than those from indefinite storage units:
 - 1) Within 30 days after receipt of the final volume of waste; and
 - 2) In accordance with the closure plan.
- b) The operator of an indefinite storage unit shall, within 30 days after receipt of a final volume of waste, either initiate:
 - 1) Removal of all wastes and waste residues from the unit; or,
 - 2) Closure of the unit in accordance with the contingent closure plan.
- c) The operator must notify the Agency within 30 days after a temporary suspension of waste acceptance. The operator must comply with the requirements of any temporary suspension plan in the permit.

35 Ill. Adm. Code 807.508

Section 807.508, Certification of Closure, states:

- a) When closure is completed, the operator of a waste management site shall submit to the Agency:
 - 1) Plan sheets for the closed site; and
 - 2) An affidavit by the operator and by a professional engineer that the site has been closed in accordance with the closure plan.
- b) If the Agency finds that the site has been closed in accordance with the specifications of the closure plan, and the closure requirements of this Part, the Agency shall:
 - 1) Issue a certificate of closure for the site;
 - 2) Notify the operator in writing that any applicable post-closure period has begun; and

- 3) Provide the date the post-closure care period begins.

35 Ill. Adm. Code 807.623

Section 807.623(a), (b) and (c), Biennial Revision of Cost Estimates, provides:

- a) The operator must revise the current cost estimate at least once every two years. The revised current cost estimate must be filed on or before the second anniversary of the filing or last revision of the current cost estimate.
- b) The operator must review the closure and post-closure care plans prior to filing a revised cost estimate in order to determine whether they are consistent with current operations and regulations. The operator must either certify that the plans are consistent, or must file an application reflecting new plans.
- c) The operator must prepare new closure and post-closure cost estimates reflecting current prices for the items included in the estimates. The operator must file revised estimates even if the operator determines that there are no changes in the prices.

35 Ill. Adm. Code 807.663

Section 807.663(a), Surety Bond Guaranteeing Performance, states:

- a) An operator may satisfy the requirements of this Subpart by obtaining a surety bond which conforms to the requirements of this Section and submitting the bond to the Agency.

VIOLATION

In general, for all five Counts, the People assert that the violations have been proven through the admissions of fact obtained from respondents and the evidence and testimony adduced at hearing. (Comp. Br. at 4.) Complainant requests that the Board enter an order that finds violations, requires closure and post-closure care for all three sites, and revokes the development permit. (Comp. Br. at 16; Comp. RBr. at 1.) Respondents generally argue that John Prior and Industrial Salvage, Inc., did not operate any of the three landfills in question from June 1985 to present (Res. Br. at 1), and that the enforcement action should be dismissed. (Res. Br. at 5.) In the alternative, respondents argue that the People should be pursuing other entities responsible for the violations. (Res. Br. at 4,

5.) For the purposes of discussing the alleged violations, the Board will first examine Counts I, II, and III, which apply to the Centralia/Prior and Prior/Blackwell sites. The Board will then turn to Counts IV and V, which allege violations at the Industrial Salvage site.

Centralia/Prior and Prior/Blackwell Sites (Counts I, II and III)

Arguments

Complainant argues that many of the violations (see Counts I, II, and III) at the Centralia/Prior and Prior/Blackwell sites have been proven through the admissions of fact by respondents. (Comp. Br. at 4-7; First Facts, Second Facts.) Complainant further states that "violations, such as the lack of biennial revisions and financial assurance updates, have also been proven without rebuttal or challenge...". (Comp. Br. at 9.)

Respondents maintain that John Prior and Industrial Salvage, Inc., did not operate Centralia/Prior or Prior/Blackwell from June 1985 to the present. (Res. Br. at 1.) Respondents assert that the Agency and the People are attempting to punish John Prior and Industrial Salvage for the acts of Jeffrey Pauline and/or Tab Schmidt, or one of their companies, who operated the two sites. (Res. Br. at 1-2.)

Who is the Operator?

The alleged violations in Count I and Count II flow from regulatory requirements for landfill operators. Therefore, the Board must first determine that John Prior and Industrial Salvage, Inc., are the operators of the Centralia/Prior and Prior/Blackwell site before proceeding to the merits of Count I and Count II. The Board finds that John Prior is the operator of the Centralia/Prior and Prior/Blackwell sites, pursuant to the definition of owner at 35 Ill. Adm. Code 807.104, which states that "...the "owner" is the "operator" if there is no other person who is conducting a waste disposal operation...". Respondents have admitted that no waste disposal operations have been conducted at the Centralia/Prior and Prior/Blackwell sites since June 1987. (Second Facts at par. 9.) Therefore, even though the operating permits for the two sites (1986-098-SP and 1986-105-SP) listed other persons as operators, the cessation of waste disposal operations at the two sites renders John Prior the present operator by definition. In addition, unrefuted testimony at hearing by Agency Manager Ken Mensing established that John Prior performed remedial earth work at the Centralia/Prior and Prior/Blackwell sites in January 1993 which also demonstrates his status as operator of those sites. (Tr. at 180, 188.)

Discussion

Having found that John Prior is the operator of the Centralia/Prior and Prior/Blackwell sites pursuant to the definition of owner at 35 Ill. Adm. Code 807.104, the Board will now examine the allegations in Counts I, Count II, and Count III. In Count I, the plain language of 35 Ill. Adm. Code 807.623(a)(b) and (c) requires that the operator is responsible for revising current cost estimates at least once every two years, including reviewing closure/post-closure care plans and preparing new closure/post-closure cost estimates. Complainant has shown that the current cost estimates of closure/post-closure care for the Centralia/Prior and Prior/Blackwell sites have not been revised since September 1986. Therefore, the Board finds that John Prior is in violation of 35 Ill. Adm. Code 807.623(a)(b) and (c), as alleged in Count I.³

The remaining allegation in Count I involves 35 Ill. Adm. Code 807.663(a) which specifies that a landfill operator may obtain a surety bond to satisfy the financial assurance requirements for landfills operators. The Board cannot find John Prior in violation of 35 Ill. Adm. Code 807.663(a) based on the record at this time. While complainant has presented persuasive evidence that financial assurance does not exist for the Centralia/Prior and Prior/Blackwell sites⁴, the allegation of violation appears to have been directed at the wrong regulation. 35 Ill. Adm. Code 807.601 requires that a person conducting a

³ Since no monetary penalty is requested, the Board need not establish a date certain as to when this obligation transferred to John Prior as the operator. Nevertheless, given the facts of this case, the time for John Prior to have complied with these requirements could have been triggered as early as 1988, the year after waste disposal operations ceased, and two years after the last revisions by the now absent operators. At the latest, John Prior's obligation could have been triggered by the expiration of the surety bonds in 1990 (See, footnote 4, page 14, *infra*).

⁴ The Agency testified that financial assurance bonds for the Centralia/Prior and Prior/Blackwell sites expired on June 12, 1990. (Tr. at 136.) The Agency previously had attempted to cash the bonds in January or February 1990 (Tr. at 138) so that the Agency could correct the problems at the Centralia/Prior and Prior/Blackwell sites. (Tr. at 105.) The bonding company refused to honor the Surety Bonds. (Tr. at 105-106.) John Prior argued that there are "trust funds on deposit to complete the closure and post-closure requirements for the Centralia Prior and Prior Blackwell sites" (Res. Br. at 3-4), but no evidence was introduced to show that these funds still exist. The only evidence in the record shows that the Surety Bonds expired in 1990.

landfill obtain financial assurance for closure and post/closure care for the site. 35 Ill. Adm. Code 807.640 lists six possible mechanisms for obtaining financial assurance, one of which is the surety bond specified at 35 Ill. Adm. Code 807.663. While the Board does not find John Prior in violation of 35 Ill. Adm. Code 807.663, the Board order will require that John Prior cease and desist from future violations. Such an order would require John Prior to come into compliance with 35 Ill. Adm. Code 807.601, which requires financial assurance through any of the six mechanisms given at 35 Ill. Adm. Code 807.640.

Count II contains allegations of statutory and regulatory violations of the requirements pertaining to proper closure and post-closure care of the Centralia/Prior and Prior/Blackwell landfills. Complainant has presented evidence in the video, the testimony of Agency Manager Mensing, and the chemical analyses which shows that the Centralia/Prior and Prior/Blackwell sites were not closed in a manner which minimizes or eliminates post-closure releases. Extensive areas of water are ponded on the surface of the landfills, chemical tests of water running off the landfill show aliphatic acid, a leachate indicator, and gaseous emissions bubble from the site. Therefore, the Board finds John Prior in violation of 35 Ill. Adm. Code 807.502.

In addition, the Board also finds John Prior in violation of 35 Ill. Adm. Code 807.508(a), and Sections 21(d)(1) and (2) of the Act. 35 Ill. Adm. Code 807.508(a) requires that landfill operators submit to the Agency plan sheets for a closed site and affidavits by operator and engineer that the site was closed in accordance with the closure plan. The record shows that John Prior has not done this. It is undisputed that the Centralia/Prior and Prior/Blackwell sites have not been issued certificates of closure by the Agency as required at 35 Ill. Adm. Code 807.508(b). Therefore, by not closing the two sites according to Board regulations, John Prior is in violation of Section 21(d)(2) of the Act which states that no person shall conduct waste operations in violation of Board regulations. John Prior is in violation Section 21(d)(1) of the Act for not implementing the closure and post-closure care plans required by the 1986 site permits for each facility. Section 21(d)(1) states that no person shall conduct waste operations in violation of permit conditions.

Count III alleges violations of Section 12(a) and (d) of the Act (415 ILCS 5/12). Section 12(a) states that no person shall cause, threaten, or allow the discharge of contaminants into the environment which cause or tend to cause water pollution in Illinois. Contaminant is defined by the Act as "any solid, liquid, or gaseous matter, and odor, or any form of energy, from whatever source". The video, testimony of Agency Manager Mensing, and chemical analysis have shown that water is ponded on the landfills, running off the landfills, and contains chemicals,

such as aliphatic acid, which indicate that the water has come into contact with landfill waste. In addition the video shows gaseous emissions from the landfill, which also qualify as contaminants, bubbling through water ponded on the surface. As owner of the landfill, John Prior is in violation for allowing these emissions to occur (See IEPA v. Rawe, AC 92-5, ___ PCB ___ (October 16, 1992); County of Ogle v. Rochelle Disposal Service Inc., and City of Rochelle, AC 92-26, 134 PCB 111 (June 4, 1992).) As owner and operator, John Prior is in violation for conducting these two sites in this manner. For similar reasons as those given above, John Prior is also in violation of Section 12(d) of the Act which states that no person shall deposit any contaminants on the land which would create a water pollution hazard (415 ILCS 5/12(a)). The Board is not persuaded by John Prior's defensive position that Mr. Mensing's testimony only established the possibility that Webster Creek was being polluted. (Comp. RBr. at 4.) Mr. Mensing's testimony and the record in this case clearly establishes that a threat (Section 12(a)) or hazard (Section 12(d)) of water pollution exists at the Centralia/Prior and Prior/Blackwell sites. Therefore, the Board finds John Prior in violation of Sections 12(a) and (d) of the Act (415 ILCS 5/12(a)(d)) as alleged in Count III.

Industrial Salvage Site (Counts IV and V)

Who is the Operator?

Before proceeding to discuss Count IV and Count V of the alleged violations, the Board must address the issue of who is the operator of the Industrial Salvage site. John Prior and Industrial Salvage, Inc., are the admitted owners of the Industrial Salvage site. (First Facts at par. 7, 8.) The operator of the Industrial Salvage site must be determined.

Complainant maintains that pursuant to the definition of owner at 35 Ill. Adm. Code 807.104, respondents are the operators of the Industrial Salvage site. (Comp. Br. at 7.) Section 807.104 states that "[the] 'owner' is the 'operator' if there is no other person who is conducting a waste treatment, waste storage or waste disposal operation". (35 Ill. Adm. Code 807.104.) Complainant asserts that respondents were the operators of the Industrial Salvage site since no other person was conducting operations as a result of an injunction order (89-CH-4) entered in Marion County Circuit Court on December 12, 1989. (Comp. Br. at 7.) Additionally, the People rely on the definition of "abandonment" at 35 Ill. Adm. Code 807.104 to determine that the Industrial Salvage site was abandoned during January 1990 due to the failure of any person to initiate closure within 30 days of the final volume of waste being accepted. (Comp. Br. at 7.) Finally, complainant argues that respondents' actions at the site during July or August 1992 may be considered

in construing respondents to be operators at the Industrial Salvage site. (Comp. Br. at 8.)

Respondents argue that complainant advances only a theoretical argument that Prior became the owner of the Industrial Salvage site when operations ceased. (Res. Br. at 5.) Respondents argue that "Prior had no right to the premises until 1992". (Res. Br. at 5.)

The Board finds that the facts of the instant case and definition of "owner" at 35 Ill. Adm. Code 807.104 lead to a determination that John Prior and Industrial Salvage, Inc., are the present operators of the Industrial Salvage site. The Board regulation at Section 807.104 clearly defines the owner as the operator if there is no other person conducting a waste management operation at the site. The December 12, 1989, injunction order entered in Marion County Circuit Court (Number 89-CH-4) ceased the operations of Centralia Environmental Services, Inc. (W.T. Schmidt, President), at the Industrial Services site. Therefore, since no other person is operating at the site, and the respondents are the owners of record, they are by definition the present operators. In addition, the Board finds that respondents are clearly the operators of the Industrial Salvage site subsequent to the August 20, 1992, order of the Marion County Circuit Court (Case Number 89-L-107) which awarded respondents clear title to the Industrial Salvage site. For the purposes of the instant case, and especially since Complainant is not asking for a monetary penalty which would toll on a daily basis, there is no need at this time for this Board to reach a definitive finding determining who may have been the operator of the Industrial Salvage site between December 12, 1989 and August 20, 1992.

Arguments

The arguments advanced by both parties are very similar in regards to prosecution and defense of Count IV and Count V. Therefore, we will consider Count IV and Count V in one presentation of argument and discussion.

Complainant generally argues that the allegations have been proven through admission of facts. (Comp. Br. at 7.) Complainant notes that the Industrial Salvage site is operating under Permit No. 1987-299-SP. (Comp. Exh. 4.) Condition 2 of that permit required that the remediation project in Area IV be completed by September 15, 1988. (Comp. Exh. 4 at 2.) Complainant asserts that the remediation project has not been completed in violation of Section 21(d)(1) of the Act (415 ILCS 5/21(d)(1)), which requires persons to conduct waste management operations according to permit conditions. (Comp. Br. at 3.) In addition, the People argue that the "abandonment of the Industrial Salvage site during and subsequent to January 1990"

shows that respondents have failed to initiate closure of the Industrial Salvage site according to Board regulations at 35 Ill. Adm. Code 807.502 and 807.506. (Comp. Br. at 3.) Complainant argues that respondents' admissions of fact and the testimony of Agency Manager Ken Mensing (Tr. at 157-176, 193-198) and video tape evidence (Comp. Exh. 8) shows that respondents are in violation of Section 12(a) and (d) of the Act (415 ILCS 5/12(a)(d) which prohibits actual or potential discharges into waters of the state, and Board regulations at 35 Ill. Adm. code 318. (Comp. Br. at 4, 7-8.)

Respondents maintain that John Prior and Industrial Salvage, Inc., did not operate the Industrial Salvage site from June 1985 to present. (Res. Br. at 1.) Respondents do concede that in July or August of 1992, John Prior did attempt to perform some work at the Industrial Salvage site. (Res. Br. at 1; Tr. at 110.) Respondents argue that the Agency's "position has been inconsistent from the beginning". (Res. Br. at 4.) Respondents argue that the Agency will not allow actions, such as remediation projects, on the Industrial Salvage site without a permit, yet when John Prior applies for a permit, the permit is rejected for, among other things, attempting to operate the landfill without a permit. (Res. Br. at 4.) Respondents assert that John Prior was attempting to put cover on the landfill in 1992 "with the full knowledge and blessing of the [Agency]", and the Agency "then uses this work as a basis to deny a permit". (Res. Br. at 4.) In summary, respondents argue that:

The government position with respect to the landfill is Kafkaesque--Fix the landfill. You can't fix it without a permit. We won't give you a permit. If you try to fix it without a permit, which we want you to do, we will use that as a basis to deny you a permit in the future by arguing that you are operating the landfill without a permit--.

(Res. Br. at 4.)

Discussion

As operators and owners of the Industrial Salvage site, respondents are required by Section 21(a) of the Act to comply with the Act, Board regulations, and existing permit conditions. The most recent permit, No. 1987-299-SP contained Condition 2 which required that the operator complete remedial investigation and removal of waste which may have been improperly disposed. (Comp. Exh. 4 at 2-3.) The Agency has presented unrefuted evidence that the remediation project has not been completed. (Tr. at 19, 117-118; Comp. Exh. 12, 13.) Therefore, the Board finds that respondents are in violation of Section 12(d)(1) of the Act for failing to comply with Condition 2 of Permit No. 1987-299-SP, which required that the remediation be completed by September 15, 1988. (Comp. Exh. 4.)

The remaining issues in Count IV and Count V concern the alleged violations of purported statutory and regulatory requirements to initiate closure and post-closure care of the Industrial Salvage site. Complainant argues that the Board may properly issue an order that finds violations, requires closure and post-closure care, and revokes the development permit. (Comp. RBr. at 1.) Complainant asserts that enforcement of this requested Board order would necessarily require the expenditure of limited funds and the concurrence of the bankruptcy court. (Comp. RBr. at 1.) Further, the People maintain that subsection 959(b) of the Bankruptcy Code (28 U.S.C. 959(b)) mandates compliance with environmental laws by debtors. (Comp. RBr. at 1.) Respondents argue that complainant ignores the admission that respondents are both in bankruptcy when arguing that respondents should follow proper closure and follow-up activities. (Res. Br. at 5.) After considering these arguments and our authority under the Act, the Board finds that we have authority to order persons to follow proper closure and post-closure procedures at landfills in Illinois and will decide the following allegations accordingly.⁵

The record shows that no waste has been received at the site since December 12, 1989. (Second Facts at par. 3.) Respondents have been operators of the Industrial Salvage site since at least August 20, 1992, and the site is still not closed. Thus, the record demonstrates that respondents have not complied with 35 Ill. Adm. Code 807.506, which requires closure of the landfill according to the closure plan within 30 days after receipt of the final volume of waste. Therefore, the Board finds that respondents are in violation of 35 Ill. Adm. Code 807.506.

The People have presented sufficient evidence through testimony (Tr. at 161-164) and visual evidence (Comp. Exh. 8) that the site has not been closed in a manner which minimizes the need for further maintenance, and controls releases to the environment. The record shows that there is exposed waste which

⁵The Board ruled on a challenge to the continuation of an enforcement proceeding subsequent to a respondent bankruptcy in People of the State of Illinois v. Robert D. Fosnock, d/b/a FOS Auto and Truck Parts, PCB 94-1, ___ PCB ___ (September 15, 1994). In that case, respondent argued that under Chapter 7 of the United States Bankruptcy Code, 11 U.S.C. Section 362(a), the automatic stay provisions applied to Board actions. The Board ruled that Section 362(b) (11 U.S.C. 362(b)) provided a "police power exception" which allows states to protect public health and the environment and sue a debtor to prevent or stop a violation of the environmental protection laws, or affix damages for violation of such laws, citing federal appellate and Supreme Court authority.

has the potential to intercept precipitation, thereby threatening to become leachate. (Tr. at 161-164 and Comp. Exh. 8.) Respondent disputes whether there is in fact evidence of leachate polluting Webster Creek. (Res. Br. at 4.) However, the Board finds that there is sufficient evidence in the record to establish that the Industrial Salvage site was not closed in a manner that controls, minimizes or eliminates post-closure release, and respondents are therefore in violation of 35 Ill. Adm. Code 807.502 as alleged.

Complainant argues that the videotape (Comp. Exh. 8) in conjunction with the narrative testimony by Agency inspector Kenneth Mensing (Tr. at 157-176) clearly demonstrates the extent of the visible problems at the site in violation of 35 Ill. Adm. Code 807.318. (Comp. Br. at 4, 8.) Complainant maintains (Comp. Br. at 9) that the extent of the leachate flows and the threat of pollutional impacts on Webster Creek are demonstrated by the video (Comp. Exh. 8), the testimony of Mr. Mensing, and the analytical reports of leachate sampling. (Comp. Exh. 6, 7.) Mr. Mensing opined that there was at least a threat of water pollution from leachate entering the stream. (Tr. at 175-176; 193-198.) Respondents counter that Mr. Mensing testified that the site looked good in October 1992. (Res. Br. at 5.)

After careful consideration of the testimony and exhibits, the Board finds that respondents are in violation of 35 Ill. Adm. Code 807.318 for failing to take necessary remedial action regarding gas, water or settling problems. It is undisputed that there is a large area of insufficiently covered waste exposed to the elements at the Industrial Salvage site. This exposed waste can be directly contacted by precipitation, which can become contaminated and potentially leave the site as leachate. The Board also finds that respondents are in violation of Section 12(d)(2) of the Act because of the aforementioned violation of Board regulations. In addition, the Board finds that respondents are in violation of Section 12(a) and (d) of the Act by causing, allowing, or threatening water pollution through leachate flows from the site. In summary, the Board finds that respondents are in violation of Count IV and Count V as alleged in the complaint.

PENALTY

Having found violation, the Board must now determine the penalty to be assessed. In determining the appropriate civil penalty, the Board considers the factors set forth in Sections 33(c) and 42(h) of the Act. (People v. Berniece Kershaw and Darwin Dale Kershaw d/b/a Kershaw Mobile Home Park, (hereinafter Kershaw) PCB 92-164 (April 20, 1994); IEPA v. Allen Barry, individually and d/b/a Allen Barry Livestock, (hereinafter Barry) PCB 88-71, 111 PCB 11 at 72 (May 10, 1990).) The Board must take into account factors outlined in Section 33(c) of the Act in determining the unreasonableness of the alleged pollution.

(Wells Manufacturing Company v. Pollution Control Board, 73 Ill.2d 226, 383 N.E.2d 148 (1978).) The Board is expressly authorized by statute to consider the factors in Section 42(h) of the Act in determining an appropriate penalty. In addition, the Board must bear in mind that no formula exist, and all facts and circumstances must be reviewed. (Kershaw, *supra*, at 14; Barry *supra*, at 62-63.)

The Board has stated that the statutory maximum penalty "is a natural or logical benchmark from which to begin considering factors in aggravation and mitigation of the penalty amounts". (Barry, *supra* at 72.) However, in this case, complainant is not asking for a monetary penalty because the respondents are both engaged in bankruptcy proceedings. (Comp. RBr. at 1.) Complainant is instead asking for an order that finds violations, requires closure and post-closure care, and revokes the development permit. (Comp. RBr. at 1.) Therefore, there is no need for the Board to calculate a theoretical maximum penalty, and, in addition, the Board will not need to reach a discussion of the Section 42(h) factors (415 ILCS 42(h)), which are used by the Board to aggravate or mitigate the penalty amount. The Board will now turn to the Section 33(c) factors to determine an appropriate remedy.

Section 33(c) Factors

Section 33(c) of the Act (415 ILCS 33(c)) sets forth five factors which the Board must consider in making its determination:

1. the character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the people;
2. the social and economic value of the pollution source;
3. the suitability or unsuitability of the pollution source to the area in which it is located, including the question of priority of location in the area involved;
4. the technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges or deposits resulting from such pollution source; and
5. any subsequent compliance.

In assessing the degree of injury, Complainant maintains that the videotape and testimony of Mr. Mensing at hearing clearly demonstrate the extent of visible problems at the three sites. (Comp. Br. at 8.) The People assert that the erosion,

settling, and leachate problems at the three sites are the consequences of the respondents not having initiated or completed closure and that the post-closure monitoring and maintenance to control or eliminate the releases caused or threatened by such problems has not been undertaken. (Comp. Br. at 8.) Complainant argues that the observed detrimental environmental impacts have resulted and will continue to result from lack of closure and post-closure care at the three sites. (Comp. RBr. at 2.) Finally, the People argue that severity of the environmental problems at the three sites justifies permit revocation and an order to cease and desist from such violations. (Comp. RBr. at 2.) Respondents counter: that the environmental problems at the sites were caused by other persons (Res. Br. at 1-2); that Mr. Mensing's testimony only established the possibility that Webster Creek was being polluted (Comp. RBr. at 4); and that a cease and desist order entailing proper closure and post-closure monitoring would require affirmative action by respondents, which is not possible because of the bankruptcy proceedings. (Res. Br. at 3.) Finally, respondents argue that when John Prior attempted to put cover on the Industrial Salvage site in 1992, the Agency then used that work as a basis to deny an operating permit to Mr. Prior. (Res. Br. at 4.)

The evidence clearly shows that lack of closure and post-closure care at the three sites is threatening, or possibly causing water pollution in Webster Creek. A wall of waste in Area I of the Industrial Salvage lacks proper cover and is exposed to the atmosphere for a distance of 500 feet. (Tr. at 161-164.) This waste can clearly intercept precipitation and thereby become leachate if not properly contained and treated. The testimony of the Agency Manager Ken Mensing, the video tape introduced at hearing, and the chemical analyses of water at the sites clearly shows that contaminants are being released to the environment, which threaten or cause water pollution. Therefore, the Board finds that the consideration of Section 33(c)(1) of the Act establishes the unreasonableness of the alleged violation and must be weighed against the respondent.

Further, the Board finds that consideration of the remaining factors in Section 33(c) of the Act also must be weighed against the respondent. The Board finds that an environmental problem of this extent has no positive social and economic value (Section 33(c)(2) of the Act) and that a pollution source of this nature is unsuitable to any area of the State of Illinois (Section 33(c)(3) of the Act). The Board believes that there is no question that it is technically practicable to alleviate this environmental problem through proper closure and post-closure care and monitoring (Section 33(c)(4) of the Act). Finally, the evidence shows that the respondents, as owners/operators of the three sites are presently not in compliance with the Act, Board regulations, and existing permits (Section 33(c)(5) of the Act). John Prior did put some cover on the Centralia/Prior and

Prior/Blackwell sites in January 1993. Respondents also performed some work at the Industrial Salvage site in July-August 1992. However, these two sporadic efforts are far outweighed by the severe environmental problems at these three sites, and the extensive permitting, planning, and engineering activities necessary to bring these facilities into compliance within the Act and Board regulations. Thus, the Board finds that there has been essentially no subsequent compliance.

In reviewing the testimony and record in this case, the Board finds some evidence to support respondents' argument that they were placed in a "Kafkaesque" situation by the Agency with respect to the permits necessary to bring the Industrial Salvage site into compliance. Agency Manager Mensing testified that Mr. Prior could not correct illegal conditions in Area I of the Industrial Salvage site without an additional permit or a "Judicial Order". (Tr. at 187.) Mr. Mensing then opined that Mr. Prior would not be able to get a prior conduct certification from the Agency (Tr. at 187-188), which is prerequisite for an operating permit. Mr. Mensing then testified that the Agency took the position that John Prior was operating without a permit when he performed work at the Industrial Salvage site in July-August 1992. (Tr. at 188.) The Board agrees that such a mixed bag of information could result in confusion. However, confusion over permits does not relieve respondents of the responsibility to comply with the Act and Board regulations. The Board will provide language in the attached order which follows to alleviate this confusion.

After a careful review of this record, the Board finds that the extreme nature of the environmental problems at the three sites requires an immediate cease and desist order, which will direct the immediate closure of the Centralia/Prior, Prior/Blackwell, and Industrial Salvage sites and initiation of post-closure care and monitoring. The Board believes such an order is necessary to alleviate a serious threat to the public health and the environment.

The Board finds that revocation of the development permit for the Industrial Salvage site is warranted by the severity of the violations and the threats to public health and the environment. Past adjudicated violations against John Prior, and these instant violations at the three sites which have been ongoing for several years, provide evidence that respondents are unable to perform their duties as landfill owners and operators. The inability of respondents to fulfill their obligations under the Act and Board regulations has caused and threatened water pollution, endangering the environment and human health. Permit revocation is also justified because there has been essentially no activity to correct the gross violations at the three sites for a period of several years. Respondents did perform work at the three sites on two separate occasions in 1992 and 1993.

However, these sporadic efforts do not rise to a sufficient showing that respondents were willing to marshal the financial resources to accomplish the permitting, planning, engineering, staffing, and equipping necessary to perform landfill activities in compliance with existing permits, Board regulations, and the Act. The Board notes that respondents attempted to obtain prior conduct certification and a supplemental operating permit to operate Area IV of the Industrial Salvages site, which were denied by the Agency in 1993. However, these permitting attempts were in relation to accepting new waste, not correcting the outstanding problems at the three sites.

CONCLUSION

In summary, the Board finds that John Prior violated the Act and Board regulations as alleged in Counts II, III, IV and V of the complaint. In Count I of the complaint, the Board finds violation, by John Prior, on all allegations except the Board did not find a violation of 35 Ill. Adm. Code 807.663(a). The Board finds Industrial Salvage, Inc., violated the Act and Board regulations as alleged in Counts IV and V of the complaint. The Board will order that the Centralia/Prior, Prior/Blackwell, and Industrial Salvage sites be immediately closed in compliance with the Act and Board regulations, and subject to conditions of the existing permits. The Board will order immediate correction of site conditions which do not meet permit conditions. The development permit for the Industrial Salvage site is revoked.

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

ORDER

1. The Board finds that respondent, John Prior violated Sections 12(a)(d), 21.1(d)(o) and 21.1(a) of the Act as well as Board regulations at 35 Ill. Adm. Code 807.318, 807.502, 807.506, 807.508, and 807.623(a)(b)(c) at the Centralia/Prior, Prior/Blackwell and Industrial Salvage sites. The Board further finds respondent, Industrial Salvage, Inc. violated Sections 12(a), (d), and 21(d) of the Act as well as Board regulations at 35 Ill. Adm. Code 807.318, 807.502, and 807.506.
2. Respondents will cease and desist from violations of the Act and the Board's regulations.
3. The Development Permit numbered 1984-3-DE for the Industrial Salvage Site is hereby revoked.
4. John Prior is hereby ordered to immediately complete closure of the Centralia/Prior and Prior/Blackwell sites in compliance with existing permits, the Act,

Board regulations, and in consultation with the Illinois Environmental Protection Agency.

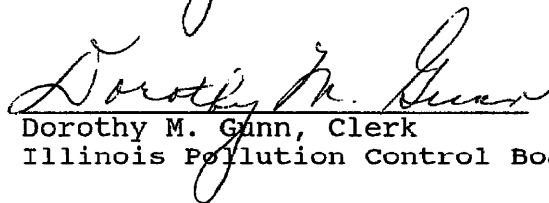
5. Respondents are hereby ordered to immediately correct conditions at the Industrial Salvage site which do not conform with permit conditions in Permit No. 1987-299-SP, including the approved remedial investigation and removal of waste which may have been improperly disposed.
6. Respondents are hereby ordered to immediately initiate closure activities at the Industrial Salvage site in compliance with the Act, Board regulations, and existing permit conditions, including but not limited to 35 Ill. Adm. Code 807.502 and 807.506.
7. Respondents shall complete closure activities at the three sites by March 15, 1996.
8. Respondents shall submit closure documentation to the Illinois Environmental Protection Agency by April 15, 1996, and obtain closure certification for the three sites as quickly thereafter as possible.
9. Respondents have the authority as owner/operators under existing permits to correct illegal conditions and close the three sites, in consultation with the Illinois Environmental Protection Agency, as required by this Order without obtaining an additional operating permit from the Agency.
10. Respondents shall post financial assurance and conduct post-closure maintenance of the three sites in compliance with the Act, Board regulations, and existing permit conditions, including approved closure/post-closure care plans.

IT IS SO ORDERED.

Board Member E. Dunham dissents.

Section 41 of the Environmental Protection Act (Ill. Rev. Stat. 1991, ch. 111 1/2, par. 1041) provides for the appeal of final Board orders within 35 days. The Rules of the Supreme Court of Illinois establish filing requirements.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above opinion and order was adopted on the 7th day of July, 1995, by a vote of 6-1.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board