

ILLINOIS POLLUTION CONTROL BOARD
December 15, 1988

IN THE MATTER OF:)	PCB AC 88-75
)	PCB AC 88-80
STEVE ZIMMERMAN AND WASTE, LTD.,)	PCB AC 88-81
INC.)	PCB AC 88-85
)	PCB AC 88-86
Respondents.)	(CONSOLIDATED)
)	DOCKET A

STEWART J. UMHOLTZ, ESQ., ASSISTANT STATE'S ATTORNEY FOR TAZEWELL COUNTY, APPEARED ON BEHALF OF THE COMPLAINANT, COUNTY OF TAZEWELL.

DANIEL M. REAVY, ESQ., OF MOHAN, ALEWELT AND PRILLAMAN, APPEARED ON BEHALF OF THE RESPONDENTS, STEVE ZIMMERMAN AND WASTE, LTD.

OPINION AND ORDER OF THE BOARD: (by M. Nardulli):

This matter comes before the Board upon the filing of five Administrative Citations by the State's Attorney of Tazewell County (hereinafter "Tazewell County") and the filing of Petition for Review in each matter by the Respondents, Steve Zimmerman and Waste, Ltd, Inc. Both filings are pursuant to Ill. Rev. Stat. 1986, Supp., ch. 111 $\frac{1}{2}$, par. 1031.1 of the Illinois Environmental Protection Act (hereinafter "Act"). On an agreed to motion by the parties, these five Administration Citation cases were consolidated by a Board order of December 15, 1988.

Two hearings was held on this matter. The first was on October 25, 1988 in Pekin, Tazewell County. This hearing covered the complaints alleged in AC 88-75, AC 88-80 and AC 88-81. No members of the public were present and no witness were called by either party. Instead, the parties announced an agreement in these matters. Tazewell County withdrew the complaints originally filed in AC 88-75, AC 88-80 and AC 88-81 alleging that the Respondents were operating a landfill, without a permit granted by the Illinois Environmental Protection Agency in violation of paragraph 21(d)(1) and/or 21(p)(7) of the Act (Rl. 4-5). The Respondents agreed not to contest the remaining count in 88-75 alleging a violation of 21(p)(12) of the Act.

The second hearing was held on November 29, 1988 in Pekin, Tazewell County. This hearing covered the complaints alleged in AC 88-85 and AC 88-86. Again, no members of the public were present and the parties called no witnesses. Instead, Tazewell County conceded that the allegations that the Respondents

operated the landfill without a permit, in violation of paragraph 21(d)(1) and/or 21(p)(7) of the Act were unfounded and were being withdrawn by Tazewell County. The Respondents agreed not to contest the remaining count in AC 88-85 alleging a violation of 21(p)(5) of the Act (R2. at 3).

Based on the agreements presented at the hearings, the Board upholds the allegation from AC 88-75 and AC 88-85 that the Respondents violated paragraph 21(p)(12) and 21(p)(5) of the Act on June 28, 1988 and August 19, 1988, respectively. No violations will be found in the remaining counts.

BACKGROUND

The Respondents, Steve Zimmerman and Waste, Ltd, Inc., are the present operators of the Pekin Metro Landfill, a sanitary landfill located in Tazewell County. The sanitary landfill is operated under Illinois Environmental Protection Agency Permit No. 70-45. On June 28, 1988 and, Mark Kimbrell, of Tazewell County, inspected the above described landfill. On the basis of the direct observation of Mr. Kimbrell, Tazewell County determined that the Respondents violated paragraph 21(p)(12) by failing to collect and contain litter by the end of an operating day. Mr. Kimbrell again inspected the site on August 19, 1988 and observed that the Respondents had violated paragraph 21(p)(7) of the Act by allowing uncovered refuse remaining in the landfill from a previous operating day.

DETERMINATION OF VIOLATION

At the hearings, the Respondents conceded to the counts alleging violation of 21(p)(12) on June 28, 1988 (R1.5) and 21(p)(5) on August 19, 1988 (R2.6) and the Respondent has made no claim that the violation was the result of uncontrollable circumstances that would excuse the violation under par. 1031.1(d)(2) of the Act. Therefore, the Board finds that the violations did occur as alleged by Tazewell County.

PENALTIES

Penalties in Administrative Citation actions of the type are prescribed by Section 42(b)(4) of the Act, to wit:

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 and of this Act shall pay a civil penalty of \$500 for each violation of 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 provision of "An Act creating the Environmental Protection Trust Fund", approved September 22, 1979, as amended; except that if a unit of local government issued the administrative citation, 50% of the civil penalty shall be payable to the unit of local government.

Respondents will therefore be ordered to pay a civil penalty of \$1000.00 based on the violations as herein found. For purposes of review, today's action (Docket A) constitutes the Board's final action on the matter of the civil penalty.

Respondent is also required to pay hearing costs incurred by the Board and Tazewell County. At hearing, the parties stated that they had agreed that the Respondents would pay no hearing costs (Rl. at 7). However, Tazewell County is not empowered to waive hearing cost due to the Board and the Board will not be bound by this agreement. The Clerk of the Board and Tazewell County are, therefore, be ordered to each file a statement of costs, supported by affidavit, with the Board and with service upon the Respondents. If Tazewell County decides not to impose their own hearing costs on the Respondents, they should inform the Board of this decision, supported by affidavit. Upon receipt and subsequent to appropriate review, the Board will issue a separate final order in which the issue of costs is addressed. Additionally, Docket B will be opened to treat all matters pertinent to the issue of costs.

This Opinion constitutes the Board findings of fact and conclusion of law in this matter.

ORDER

- 1) Respondent is hereby found in violation, as alleged, of Ill. Rev. Stat. 1986, Supp., Ch. 111 $\frac{1}{2}$, par. 1021(p)(12) and 1021(p)(5).
- 2) Within 45 days of this Order of December 15, 1988, Respondent shall, by certified check or money order, pay a civil penalty in the amount of \$500.00 payable to the Environmental Protection Trust Fund. Such payment shall be sent to:

Illinois Environmental Protection Agency

Fiscal Service Division
2200 Churchill Road
Springfield, IL 62706

- 3) Within 45 days of this Order of December 15, 1988, Respondent shall, by certified check or money order, pay a civil penalty in the amount of \$500.00 payable to Tazewell County Health Department. Such payment shall be sent to:

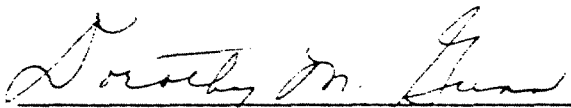
Gordon Pouquette
Tazewell County Health Department
R.R #1
Tremont, IL 61568

- 4) Docket A in this matter is hereby closed.
- 5) Within 30 days of this Order of December 15, 1988, the State's Attorney of Tazewell County shall file a statement of its hearings costs, supported by affidavit, with the Board and with service upon Respondent. Within the same 30 days, the Clerk of the Pollution Control Board shall file a statement of the Board's costs, supported by affidavit and with service upon Respondent. Such filings shall be entered in Docket B of this matter.
- 6) Respondent is hereby given leave to file a reply/objection to the filings as ordered in 4) within 45 days of this Order of December 15, 1988.

Section 41 of the Environmental Protection Act, Ill. Rev. Stat. 1985, ch. 111^{1/2}, par. 1041, provides for appeal of Final Orders of the Board within 35 days of the issuance of Final Orders. The Rules of the Supreme Court of Illinois establish filing requirements.

IT SO ORDERED.

I, Dorothy M Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 15th day of December, 1988, by a vote of 7-0.



Dorothy M. Gunn, Clerk,
Illinois Pollution Control Board