ILLINOIS POLLUTION CONTROL BOARD
July 13, 1989

IN THE MATTER OF:	)	
	)	
PIELET BROTHERS' TRADING, INC., an Illinois Corporation[1],	)	AC 88-51, Docket A and B
	)	IEPA DOCKET NO. 8983-AC
	)	
Respondent.	)	

MR. WILLIAM SELTZER, STAFF ATTORNEY, APPEARED ON BEHALF OF THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY;

MR. RAYMOND T. REOTT AND MS. REBECCA L. RAFTERY, OF JENNER AND BLOCK, APPEARED ON BEHALF OF RESPONDENT.

OPINION AND ORDER OF THE BOARD (by R. C. Flemal):

This matter comes before the Board upon a May 16, 1988, filing of an Administrative Citation ("Citation") by the Illinois Environmental Protection Agency ("Agency") and a June 16, 1988, filing of a Petition for Review filed by Respondent, Pielet Brothers' Trading, Inc. ("Pielet Brothers"). Both filings are pursuant to the Environmental Protection Act, Ill. Rev. Stat. 1987, Ch. 111½, par. 1031.1 ("Act").

Hearing was held on November 18, 1988, at the St. Clair County Building, Belleville, Illinois. Testimony was presented by Messrs. Randy D. Ballard and Kenneth Mensing, on behalf of the Agency, and by Messrs. Kenneth Mensing (under subpoena), Samuel Pielet and James Douglas Andrews, on behalf of Respondent. No members of the public were in attendance.

The Agency filed its Brief in Lieu of Closing Argument ("Agency Brief") on February 6, 1989. Pielet Brothers filed its brief in response ("Resp. Brief") on April 20, 1989.

BACKGROUND

Pielet Brothers operates a sanitary landfill in St. Clair County. The facility also is known as National City/St. Louis

[1] Mr. Phillip Van Ness, an attorney with the Board, worked on this matter during his previous employment with the Agency. He did not participate in the deliberations nor the decision in this matter.

Auto Shredding, Inc. Pielet Brothers shreds scrap automobiles and appliances, processes the resultant mixture, and recovers about 80% of the automobiles and appliances as scrap metal. The remaining 20% of the scrapped automobiles and appliances is referred to as "shredder residue" or "auto fluff". Shredder residue consists of stone, dirt, glass, plastic and rubber. Pielet Brothers deposits the shredder residue in its landfill (R. at 148-9).

On April 12, 1988, Mr. Ballard inspected the landfill site. On the basis of Mr. Ballard's inspection, the Agency determined that Pielet Brothers, on the day of inspection, had operated the site in violation of nine provisions of the Act, to wit:

A. Uncovered refuse remaining from a previous operating day, unless authorized by permit, in violation of Ill. Rev. Stat. 1986 Supp., ch. 111½, par. 1021(p)(5).

B. Having failed to provide final cover within time limits established by Pollution Control Board Regulations, in violation of Ill. Rev. Stat. 1986 Supp., ch. 111½, par. 1021(p)(6).

C. Causing or allowing scavenging operations, in violation of Ill. Rev. Stat. 1986 Supp., ch. 111½, par. 1021(p)(8).

D. Accepting wastes without necessary permits, in violation of Ill. Rev. Stat. 1986 Supp., ch. 111½, par. 1021(p)(7).

E. Causing or allowing open burning of refuse, in violation of Ill. Rev. Stat. 1986 Supp., ch. 111½, par. 1021(p)(4).

F. Conducting a sanitary landfill operation in a manner which resulted in leachate flow entering Waters of the State, in violation of Ill. Rev. Stat. 1986 Supp., ch. 111½, par. 1021(p)(2).

G. Causing or allowing refuse in standing or flowing water, in violation of Ill. Rev. Stat. 1986 Supp., ch. 111½, par. 1021(p)(1).

H. Causing or allowing the deposition of refuse in an unpermitted portion of said landfill facility, in violation of Ill. Rev. Stat. 1986 Supp., ch. 111½, par. 1021(p)(9).

I. Failure to submit reports required by permits or Pollution Control Board Regulations, in violation of Ill. Rev. Stat. 1986 Supp., ch. 111½, par. 1021(p)(11).

Accordingly, the Agency issued its Citation assessing a civil penalty of $500 for each of the nine violations, pursuant to Section 42(b)(4) of the Act.

Pielet Brothers now contests before this Board the Agency's determination of the violations.

MOTIONS AND REMAINING COUNTS

At hearing the Agency moved to amend the Citation by striking Paragraph I. This motion was granted by the Hearing Officer (R. at 210). The Hearing Officer was in error in dismissing this count since it was beyond his authority to do so pursuant to the Board's procedural rules (35 Ill. Adm. Code 103.140(e)). Nevertheless, upon review of the record the Board finds that Respondent had complied with Section 21(p)(11) of the Act (R. at 210), that the Agency properly sought dismissal of this count, and that no prejudice would result from such dismissal. Therefore the Board grants dismissal and strikes Paragraph I.

Concurrent with filing of its Brief, the Agency moved to further amend the Citation by striking Paragraph H. In order to rule on this motion, it is necessary to recount the history leading to the motion and its bearing on the violations contained in Paragraph A as well as those contained in Paragraph H.

As noted above in Paragraph H, the Agency found that Pielet Brothers violated Section 21(p)(9) of the Act, the prohibition against causing or allowing the deposition of refuse in any unpermitted portion of a landfill. The Agency also found that Pielet Brothers violated Section 21(p)(5) by allowing uncovered refuse to remain at the site for more than one operating day, as indicated in Paragraph A.

It is undisputed that prior to April 1983 Pielet Brothers held a permit for the site for deposition of waste by the trench method for certain portions of the landfill designated therein (Illinois Environmental Protection Agency Operating Permit No. 1976-21-OP, designated Site Code No. 1631000003). At hearing and in its brief, Pielet Brothers asserts that in 1983 it submitted a permit application which would allow disposition of waste by the area fill method in a portion of the site alleged in violation. Pielet Brothers then argues that since this application was presented to the Agency in 1983 and no final action was taken, Pielet Brothers now has been granted a "permit by default" for deposition of waste in the portion of the site alleged in

violation, pursuant to 35 Ill. Adm. Code 807.205(g). In addition, Pielet Brothers alleges that this permit by default contains provisions to allow uncovered refuse to remain at the site for a period of thirty days before otherwise disposed of or covered. Therefore, Pielet Brothers argues that due to the permit by default, the Agency's allegations of both Paragraphs H and A are without merit[2].

In its brief, the Agency supports its request for the striking of Paragraph H, stating that it was surprised at hearing by this defense and that the record is insufficient to make a determination of this issue in an administration citation appeal. In the alternative, the Agency requests that another hearing be provided to allow it to present additional evidence on this issue.

Pielet Brothers alleges that dismissal of Paragraph H without prejudice or allowing for an additional hearing would be prejudicial to Pielet Brothers. Pielet Brothers asserts that the Agency did not claim surprise at hearing and that it should not have to go through the expense of an additional hearing in order for the Agency to attempt to better its case. Also, Pielet Brothers states that should dismissal be allowed, it should be with prejudice.

The Board denies the Agency's motion to strike Paragraph H, and denies the Agency's motion in the alternative to order an additional hearing. The Board finds that by not raising the issue at hearing, the Agency waived its claim of surprise. The Board further finds that the Agency files contained information on the 1983 application, that evidence and testimony by Agency employees and others have already been introduced into the record, and that dismissal or an additional hearing would be prejudicial to Pielet Brothers. The Board further notes that dismissal of Paragraph H, even with prejudice, would still require the resolution of the permit by default issue in this proceeding, since the the permit by default defense bears on issues related to other paragraphs as well as Paragraph H. The Board will now decide the merits of the permit by default defense.

PERMIT BY DEFAULT

Pielet Brothers presented testimony and evidence of various meetings and communications between Pielet Brothers and Agency

[2] Pielet Brothers also raised this defense for other violations indicated by the Agency. The defense as pertaining to the other violations is discussed later in this Opinion.

representatives which took place in 1982 and 1983. Kenneth Mensing, regional manager for the Agency Division of Land Pollution Control, Southern Region, testified that in July 1982 he participated in such a meeting and that the meeting was discussed in a memo he wrote at that time (See, Resp. Exh. 9). He stated that at this meeting, the Agency Deputy Director, Del Haschemeyer, gave Pielet Brothers authority to operate as an area fill on a short term basis with the understanding that a permit application would be pursued, and that recycling would be investigated (R. at 135-139; See also Resp. Exh. 9). He was unsure as to what that "short term basis" would be, although it was his understanding that such permission was given in the hope that the permit problems would be resolved in the short term (R. at 137, 143).

Douglas Andrews, engineer consultant to Pielet Brothers, testified that the site received its first development permit in 1976 and its first operating permit in 1979. The 1979 permit was for a trench method of disposal covering trench #3. He stated that Pielet Brothers filed its next application in January 1982, which application was subsequently withdrawn in June or July 1982. He testified that the decision regarding the permit's withdrawal was made after the meeting with the Agency in July 1982. Andrews stated that also after the July 1982 meeting, his firm was to conduct a subsurface investigation of the site; that this was completed in January 1983; and the report of the investigation was delivered to the Agency. He said the report concluded that an area fill operation could take place (R. at 163-171).

In March 1983, another meeting was held involving Andrews, Samuel Pielet, Agency representatives, and Dr. Lincoln Hawkins; Dr. Hawkins is a researcher involved in plastics recovery. Andrews stated that the concept of thirty day cover as opposed to daily cover was discussed at this meeting, with Dr. Hawkins stating that cover on a daily basis would result in too much earth material mixed with the plastic material so as to make recovery of the plastic impractical[3]. Andrews testified that on April 13, 1983, his firm submitted an application for a developmental and operational permit which contained, among other things, provisions for both an area fill and for thirty day cover (R. at 173-4, 180; See, also Resp. Exh. 5). He stated that there has been no response from the Agency regarding this permit application (R. at 184).

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[3] Samuel Pielet, Vice-President of the operator of the site, also testified regarding this meeting and stated that the technology for recovery of this particular plastic material is not presently viable, but that thirty day cover was proposed in the event that it would soon become so (R. at 153-7).

Andrews testified regarding his subsequent dealings with the Agency concerning the application. He stated that he had conversations with Agency personnel regarding monitoring wells and submitted a written request to the Agency to delay review of the application until his firm could submit monitoring information. He said that he submitted the monitoring information five or six weeks after his letter extending the review time, in August 1983 (R. at 189-190, 200). Andrews stated that he assumed that the permit was under consideration, and did not know the status of the application. He stated that in approximately 1986 he had been told by an Agency employee that the application had been overlooked (R. at 207-210).

Pielet Brothers argues that the facts presented show that it has a permit deemed granted by default pursuant to 35 Ill. Adm. Code 807-205(g), due to Agency inaction on a permit application submitted in 1983. Section 807.205(g) provides for a 90 day deadline for final Agency action on a permit. The Board notes that Section 39(a) of the Act also provides for a 180 day deadline for development permits as follows:

> If there is no final action by the Agency within 90 days after the filing of the application for permit, the applicant may deem the permit issued; except that this time period shall be extended to 180 days when (1) notice and opportunity for public hearing are required by State or federal law or regulation, or (2) the application which was filed is for any permit to develop a landfill subject to issuance pursuant to this subsection.

The regulations also provide at Section 807.205(h):

> Any applicant for a permit may waive the requirement that the Agency shall take final action within 90 days or 45 days from the filing of the application.

In further support of its position, Pielet Brothers cites IEPA v. PCB, 37 Ill. App. 3d 519, 346 N.E.2d 427 (5th Dist. 1976). In that case, the Agency denied an application for a permit filed by the City of East St. Louis approximately 30 days after the 45-day time limit in the regulations (then Rule 205(g)). The Agency cited deficiencies in the application as reason for the denial. The Board found that the permit was deemed granted for failure to take final action within the 45-day time limit, and the Fifth District upheld the Board's finding.

The Agency asserts that Pielet Brothers cannot now claim that it has a permit by default when it is acting inconsistently with the terms of that alleged permit. The Agency cites as support the fact that Pielet Brothers is now applying cover on a daily basis, as well as the fact that other requirements of the alleged permit were never implemented, such as installation of certain monitoring wells and berms.

Upon examination of the facts presented in the record, the Board finds that no permit has issued by default in this matter. The Board finds that the testimony of Douglas Andrews indicates that at least one waiver of the time limits contained in Section 807.205(g) was given for further submission of information by Pielet Brothers. Although Pielet Brothers' witness indicates that all reports were given to the Agency by August 1983 (R. at 206), it is unclear whether it was communicated to Agency officials that the waiver was until "August 1983" or whether other information was to be submitted. It also unclear whether other information was to be submitted regarding the recovery of plastics, since it was Pielet Brothers, as proposer of the possibility of utilizing such process in the future, who would have communicated whether the technology was ready for use. Furthermore, the Board agrees with the Agency that if Pielet Brothers had deemed the permit granted, it would presumably have installed the monitoring wells and berms. These items were apparently still under consideration. Finally, IEPA v. PCB, cited above, does illustrate that the Board has found permits deemed granted when the Agency fails to act within the prescribed time limits, and that the Board's decision on this issue has been upheld by the Fifth District Appellate Court. However, the facts of that case do not indicate that any waivers of the time limits were given.

The Agency is cautioned however, that such inaction absent a waiver, results in a permit granted by default pursuant to Section 807.205(g).

The Board further notes that pending the final disposition of the permit application, the existing permit remains in effect. The Board believes that even if a permit by default had issued in this case, such permit would only serve to insulate Pielet Brothers from the charge of operating in unpermitted portions of the landfill (See, Illinois Power Co. v. PCB, 112 Ill.App.3d 457,462, 445 N.E.2d 820 (5th Dist. 1983). The Fifth District found that permit issued by operation of law left Illinois Power Company vulnerable to any charge of violation except that of operating without a permit.).

As a final alternative on the permit issue, Pielet Brothers argues that a permit is not even required for this site because, as it claims, any refuse which it disposes of is generated by its own activities and it is therefore exempt from permit requirements pursuant to Section 21(d)(1) of the Act. The Board notes that in so arguing, Pielet Brothers is attempting to once again litigate issues decided by the Board and upheld by the Appellate Court in Pielet Brothers Trading, Inc. v. Pollution Control Board, 110 Ill.App.3d 752, 442 N.E. 2d 1379 (1982). In that case, the Fifth District explicitly affirmed the Board on the basis that the shredder residue was not refuse generated by the operator's own activities (110 Ill. App. 3d 753).

ESTOPPEL

Pielet Brothers argues in the alternative, that under principles of common law estoppel, the Agency should be estopped "from now seeking to punish activities it allowed or even encouraged". In support of its position, Pielet Brothers again points to its 1982 and 1983 meetings with Agency representatives, and the follow-up memo (Resp. Exh. 9), as discussed above. Pielet Brothers argues that through these meetings, Agency officials were aware of and encouraged Pielet Brothers' plans to change its operations from a trench fill to an area fill. Pielet Brothers further argues that after it began operating as an area fill, it filed several documents with the Agency, all indicating that it was developing its area fill (See, Closure Plan, Post-Closure Care Plan and Cost Estimates, and their revisions, Resp. Exhs. 8, 12). These documents state in pertinent part:

> Although the development permit allows trench excavation, the facility operator has elected to conduct an area fill operation for several years.
>
> (Resp. Exh. 12, Revised Closure Plan at 2; Resp. Exh. 8, Closure Plan at 2)

Pielet Brothers cites Tyska v. Board of Education, 117 Ill. App. 3d 917, 931, 453 N.E.2d 1344, 1356 (1st Dist. 1983) as support for its position, which states in part:

> Equitable estoppel has been defined as the effect of the voluntary conduct of a party whereby he is precluded from asserting rights which might otherwise have existed as against another party who has relied in good faith upon such conduct and has been led thereby to change his position for the worse. Willowbrook Development Corp. v. Pollution Control Board (1981), 92 Ill.App.3d 1074, 416 N.E.2d 385. . . Although the application of equitable estoppel against a public body is generally disfavored and should not be invoked except in rare and unusual circumstances Ponton v. Illinois State Board of Education (1978, 62 Ill.App. 3d 907, 909, 379 N.E.2d 1277, the doctrine may be applied where, under all the facts and circumstances, the acts of the public body have created a situation where it would be inequitable or unjust to permit it to negate what it has done or permitted to be done. Pioneer Processing, Inc., v. Environmental Protection Agency (1982), 111 Ill.App.3d 414, 444 N.E.2d 211. [Remainder of citations omitted].

* * *

> An essential element of equitable estoppel is that in reliance on the representation of another, the party asserting the estoppel must have done or omitted some act or altered his position in such a way that he would be injured if the other person is not held to the representation on which the estoppel is predicated. Department of Public Works & Buildings v. Exchange National Bank (1975), 31 Ill.App.3d 88, 334 N.E.2d 810.

Willowbrook Development Corp., as cited by the Tryska court contains six elements that court believed must be presented for the doctrine of equitable estoppel to be applicable:

> (1) Words or conduct by the party against whom the estoppel is alleged constituting either a misrepresentation or concealment of material facts; (2) knowledge on the part of the party against whom the estoppel is alleged that representations made were untrue; (3) the party claiming benefit of an estoppel must have not known the representations to be false either at the time they were made or at the time they were acted upon; (4) the party estopped must either intend or expect that his conduct or representations will be acted upon by the party asserting the estoppel; (5) the party seeking the benefit of the estoppel must have relied or acted upon the representations; and (6) the party claiming the benefit of the estoppel must be in a position of prejudice if the party against whom the estoppel is alleged is permitted to deny the truth of the representations made. Stewart v. O'Bryan (1977), 50 Ill.App.3d 108, 110, 365 N.E.2d 1019, 1020-21.

The Agency's arguments on the estoppel issue appear to be the same as those advanced on the permit by default issue.

The Board believes the record reveals that the Agency, through its representatives, made representations to Pielet Brothers upon which Pielet Brothers could reasonably have believed allowed it to deposit waste by area fill method in certain portions of the landfill in addition to those permitted. Although the record indicates this method of disposal was allowed for only a "short time", the Agency never positively indicated whether such representations were withdrawn. This the Board finds true, even though the Closure Plan and its revision submitted by Pielet Brothers indicates that "the operator has elected to conduct an area fill operation for several years." Such election could reasonably have been based upon the Agency's representations, a fact which may not have been necessary to include in the closure documents.

Pielet Brothers also could not reasonably have known the Agency would require it to again deposit waste solely by trench method according to its existing permit, absent any further statements requiring it to do so. Furthermore, it could reasonably be expected by the Agency that Pielet Brothers would, after the 1983 and 1982 meetings, conduct an area fill operation, and that Pielet Brothers could reasonably have relied upon the Agency's representations made at those meetings. Finally, for the Agency to bring an enforcement action, with its attendant penalties, for deposition of waste in the same portion of the landfill for which, by positive action of its officials, it had previously allowed, clearly places Pielet Brothers in a position of prejudice.

For the foregoing reasons, the Board finds that the Agency is estopped from finding Pielet Brothers has violated Sections 21(p)(9) and 21(p)(5) of the Act for the time period contained in the citation, but only as those violations relate to (1) the deposition of waste in the portion of the landfill expressly allowed by the Agency through representations made at its 1982 and 1983 meetings, as indicated by the testimony and exhibits contained in the record, and (2) only for those portions of the landfill and those wastes for which recovery of plastic material had been sought, also as indicated by the testimony and exhibits contained in the record. The Board will now proceed to the merits of the contested findings of violation.

FINDINGS OF VIOLATION

Paragraph A, Violation of Section 21(p)(5)

The Board agrees that the record indicates that Pielet Brothers allowed certain wastes which were not of the type which recovery of plastics had been sought to remain uncovered, and that these wastes were not covered on a daily basis. These include household waste, lumber, and cardboard as depicted in photographs taken the day of inspection (Agency Group Exh. 1; R. at 69-71). The Board believes that this alone is sufficient for a finding of violation of Section 21(p)(5), and that Pielet Brothers has not shown that this condition was the result of

uncontrollable circumstances[4]. Therefore, the Board upholds the determination of violation of Section 21(p)(5) and the penalty imposed. It is therefore not necessary for the Board to determine whether Pielet Brothers was in violation of the thirty day cover which the Agency allowed through its representations, although there is evidence in the record that Pielet Brothers was covering less frequently that 30 days and that some wastes had never been covered (R. at 22, 29). By the language of the Act, it is questionable whether the Board may make a finding of violation of an Agency "representation", or whether in an administrative citation proceeding the Board could make a finding of violation of permit conditions which allow refuse to remain uncovered for a period greater that one day.

Paragraph B, Violation of Section 1021(p)(6)

The record indicates that at the time of inspection, Pielet Brothers was conducting its operation in such a manner as to constitute failure to provide final cover within time limits established by Board regulations (35 Ill. Adm. Code 807.305(c)) (R. at 41-4; Agency Group Exh. 1).

The Board agrees with the Agency that there was no evidence offered to indicate that Pielet Brothers had a permit providing for a schedule of final cover differing from the sixty-day requirement contained in the Board's rules. Although Pielet Brothers was allowed to cover less frequently than daily for purposes of future recycling, there is no evidence in the record to indicate that an exemption from final cover requirements was included in the Agency's representations. Consequently, the Agency is not estopped from finding violation of the final cover requirements contained in Section 21(p)(6) and Board regulations. Pielet Brothers did not allege that the failure to provide final cover was the result of uncontrollable circumstances nor did it offer any other defenses. Therefore, the Board upholds the determination of violation of Section 21(p)(6) and the penalty imposed.

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[4]The Board notes that the Act provides for a defense to findings of violations in administrative citation cases.

> .... if the Board finds that the person appealing the citation has shown that the violation resulted from uncontrollable circumstances, the Board shall adopt a final order which makes no finding of violation and which imposes no penalty. Ill. Rev. Stat. 1986 Supp., ch. 111½, par. 1031.1(d)(2).

Pielet Brothers does not positively allege the violations resulted from uncontrollable circumstances. However Pielet Brothers does argue that some of the violations were due to trespassers.

Paragraphs C and E, Violation of Sections 21(p)(8) and 21(p)(4)

The record indicates that scavengers conducting scavenging operations were observed at the site by the Agency inspector (R. at 45-9; Agency Group Exh. 1). The record further indicates that such scavengers were also conducting open burning of refuse (R. at 45-9, Agency Group Exh. 1).

Pielet Brothers argues that these activities were the result of the less frequent application of cover. The Board finds that by the language of the Act, it is assumed that there will be situations where less frequent cover is authorized (Section 21(p)(5). However, less frequent application of cover is not per se authorization to allow scavenging and open burning to occur. Pielet Brothers further argues that such scavenging is the result of trespassers entering the property. As the Agency correctly points out, Pielet Brothers has failed to show that the scavenging and open burning conducted at the landfill, whether or not conducted by trespassers, was the result of uncontrollable circumstances. Therefore, the Board upholds the determination of violation of Sections 21(p)(8) and 21(p)(4) and the penalties imposed.

Paragraph D, Violation of Section 21(p)(7)

It is undisputed that Pielet Brothers' facility is not permitted to accept household refuse (R. at 54). As noted earlier, the record indicates that Pielet Brothers' facility contained household refuse, cardboard and decaying lumber (R. at R. at 69-71; Agency Group Exh. 1). Pielet Brothers did not specifically address this finding of violation in its brief. At hearing, Pielet Brothers attempts to establish that the acceptance of the household refuse was the result of trespassers entering the site (R. at 116-117). As the Agency correctly points out, even assuming the trespasser situation, such defense fails to establish that the violation resulted from uncontrollable circumstances. As shown by a conversation between the site inspector and an employee of the facility, no effort had been made to prevent unauthorized persons from entering the site (R. at 45-6). Therefore, the Board upholds the determination of violation of Section 21(p)(7) and the penalty imposed.

Paragraphs F and G, Violation of Sections 21(p)(2) and 21(p)(1)

The record indicates that the inspector observed refuse in leachate and water, and pools of leachate at various areas of the site (R. at 20, 23-9, 52-61, 64-5; Agency Group Exh. 1). Although the inspector did not observe leachate entering the creek adjacent to the site (R. at 27), he did observe leachate entering water-filled wetlands to the eastern portion of the site (R. at 54, 73; Agency Group Exh. 1).

As to these findings of violation, Pielet Brothers again argues that the leachate problems were related to the less frequent application of cover. Again similar to the Board findings on Paragraphs C and E, less frequent application of cover is not per se authorization to cause or allow leachate to flow into Waters of the State, or to cause or allow refuse to remain in standing or flowing water. Therefore, the Board upholds the determination of violation of Sections 21(p)(2) and 21(p)(1) and the penalties imposed.

Paragraph H, Violation of Section 21(p)(9)

The Board finds that since the Agency's findings of violation of Section 21(p)(9) pertain only to those portions of the landfill for which the Agency expressly allowed deposition of waste by the area fill method, the Agency is estopped from finding violation for the time period contained in the citation, as discussed above.

PENALTIES

Penalties in Administrative Citation actions of the type here brought are proscribed 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 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 Penalties Trust Fund to be used in accordance with the provisions of "An Act creating the Environmental Protection Trust Fund",approved September 22, 1979...
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> Ill. Rev. Stat., 1986 Supp., ch. 111 1/2, par. 1042(b)(4).

Respondent will therefore be ordered to pay a civil penalty of $3,500 based on the seven 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 the Agency. The Clerk of the Board and the Agency will therefore be ordered to each file a statement of costs, supported by affidavit, with the Board and with service upon Pielet Brothers. 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's findings of fact and conclusions of law in this matter.

ORDER

1. Respondent is hereby found to have been in violation on April 12, 1988, of Ill. Rev. Stat. 1986 Supp., Ch. 111 1/2, par. 1021(p)(1), 1021(p)(2), 1021(p)(4), 1021(p)(5), 1021(p)(6), 1021(p)(7), and 1021(p)(8).

2. Within 45 days of this Order of July 13, 1989, Respondent shall, by certified check or money order, pay a civil penalty in the amount of $3,500 payable to the Illinois Environmental Protection Trust Fund. Such payment shall be sent to:

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

3. Docket A in this matter is hereby closed.

4. Within 30 days of this Order of July 13, 1989, the Illinois Environmental Protection Agency shall file a statement of its hearing costs, supported by affidavit, with the Board and with service upon Pielet Brothers. 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 Pielet Brothers. Such filings shall be entered in Docket B of this matter.

5. Respondent is hereby given leave to file a reply/objection to the filings as ordered in 4) within 45 days of this Order of July 13, 1989.

Section 41 of the Environmental Protection Act, Ill. Rev. Stat. 1987 ch. 111½ par. 1041, provides for appeal of final Orders of the Board within 35 days. The Rules of the Supreme Court of Illinois establish filing requirements.

IT IS SO ORDERED.

Board Member Jacob D. Dumelle concurred; Board Member J. Theodore Meyer dissented.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 13th day of July, 1989, by a vote of 6-1.

Dorothy M. Gunn

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board