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STATE OF ILLINOIS
Pollution Control Board

OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

November 8, 2004

The Honorable Dorothy Gunn
Illinois Pollution Control Board
State of Illinois Center
100 West Randolph
Chicago, Illinois 60601

Re: ***People v. Jersey Sanitation Corporation***
PCB No. 97-2

Dear Clerk Gunn:

Enclosed for filing please find the original and ten copies of a NOTICE OF FILING and COMPLAINANT'S REPLY POST-HEARING BRIEF in regard to the above-captioned matter. Please file the original and return a file-stamped copy of the document to our office in the enclosed, self-addressed, stamped envelope.

Thank you for your cooperation and consideration.

Very truly yours,

Jane E. McBride
Environmental Bureau
500 South Second Street
Springfield, Illinois 62706
(217) 782-9031

JEM/pp
Enclosures

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STATE OF ILLINOIS
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
v.	)	**PCB NO. 97-2**
	)	**(Enforcement)**
JERSEY SANITATION CORPORATION,	)	
an Illinois corporation,	)	
	)	
Respondent.	)	

NOTICE OF FILING

To: Stephen F. Hedinger
Attorney at Law
2601 South Fifth Steet
Springfield, IL 62703

PLEASE TAKE NOTICE that on this date I mailed for filing with the Clerk of the Pollution Control Board of the State of Illinois, COMPLAINANT'S REPLY POST-HEARING BRIEF, copies of which are attached hereto and herewith served upon you.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN,
Attorney General of the
State of Illinois

MATTHEW J. DUNN, Chief
Environmental Enforcement/Asbestos
Litigation Division

BY:
JANE E. McBRIDE
Assistant Attorney General
Environmental Bureau

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: November 8, 2004

CERTIFICATE OF SERVICE

I hereby certify that I did on November 8, 2004, send by First Class Mail, with postage thereon fully prepaid, by depositing in a United States Post Office Box a true and correct copy of the following instruments entitled NOTICE OF FILING and COMPLAINANT'S REPLY POST-HEARING BRIEF

To: Mr. Stephen Hedinger
Hedinger Law Office
2601 South Fifth Street
Springfield, Illinois 62703

and the original and ten copies by First Class Mail with postage thereon fully prepaid of the same foregoing instrument(s):

To: Dorothy Gunn, Clerk
Illinois Pollution Control Board
State of Illinois Center
Suite 11-500
100 West Randolph
Chicago, Illinois 60601

A copy was also sent by First Class Mail with postage thereon fully prepaid

To: Carol Webb
Hearing Officer
Pollution Control Board
1021 N. Grand Avenue East
Springfield, Illinois 62794

Jane E. McBride
Assistant Attorney General

This filing is submitted on recycled paper.

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STATE OF ILLINOIS
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
vs.	)	**PCB No. 97-2**
	)	
JERSEY SANITATION CORPORATION, an Illinois corporation,	)	
	)	
Respondent.	)	

COMPLAINANT'S REPLY POST-HEARING BRIEF

NOW COMES Complainant, PEOPLE OF THE STATE OF ILLINOIS (hereinafter, the "Complainant") by LISA MADIGAN, Attorney General of the State of Illinois, and at the request of the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY ("Illinois EPA"), by and through its attorneys, files its reply post-hearing brief in this matter.

Introduction

In its prayer for relief in this matter, Complainant seeks a finding and order from the Board which will require Respondent Jersey Landfill to address the fact that groundwater sampling results indicate exceedences of the State's groundwater quality standards in the down gradient wells at the subject landfill. The groundwater monitoring well identified as an upgradient well under the Respondent's current monitoring plan, does not show exceedences. Respondent insists the upgradient well in question is monitoring upgradient groundwater. Thus, based on the sampling results, the landfill is impacting the groundwater and additional analysis is merited.

Existing permit conditions require the landfill, in the words of the Respondent's own groundwater expert Kenneth Liss, given that the landfill's sampling results indicating exceedences of the groundwater standards, to conduct more frequent sampling and perform a trend analysis of groundwater sample results obtained at the landfill. Tr. for January 13, 2004 hearing date at 40 and 41. The permit further requires that should the trend analysis show that

the groundwater does indeed appear to be impacted, Respondent should retain a professional engineering firm to develop future actions/or plans for subsequent Illinois EPA approval. Pursuant to testimony provided by Respondent's witness Andy Rathsack, such further action may include a groundwater assessment. Respondent's witness' testimony was supported by the testimony of Complainant's witnesses Karen Nelson and Joyce Munie, who both testified that based on their professional judgment and the requirements of the current permit, a trend analysis and groundwater assessment should be conducted at the landfill given that the State's groundwater quality standards have been exceeded at the landfill. Citation to the referenced testimony is included in Complainant's original post-hearing brief.

Further, based on the existence of a long-unanswered question in this matter as to the appropriateness of the landfill's monitoring well G103 as an upgradient well, Complainant seeks an order from the Board that will require Respondent to conduct an analysis and evaluation of its current monitoring plan and the appropriateness of G103 as an upgradient well. This portion of the Complainant's prayer for relief is strongly supported by the many exhibits that have been admitted in the record of this matter. For years, the landfill's permit has required an evaluation of the monitoring plan due to the fact the Illinois EPA field staff and permit writers questioned the appropriateness of G103 as an upgradient well. Respondent has repeatedly failed to comply.

Just as Respondent failed to comply with groundwater analysis, evaluation and assessment requirements in its previous permits, currently, Respondent has failed to comply with the requirement in its existing permit that it conduct a trend analysis and any further appropriate corrective action. Its own expert, Kenneth Liss, testified that given the sample results currently available for the landfill, pursuant to the landfill's existing permit, it should conduct a trend analysis. Respondent has contended, since it first filed an appeal of its 1999 permit in the year 2000, that the provision Mr. Liss indicated requires a trend analysis is indeed

a viable part of its permit. However, Respondent has continued to fail to comply with this very provision.

Respondent claims that at the time it bought the landfill the corporation had no equipment and insufficient money to close the landfill. It had to operate the landfill to be able to close it. Respondent purchased the entire 200 acres entailed in the landfill property. Over Complainant's objections, the hearing officer allowed a significant amount of testimony, elicited from Pamela Shourd, regarding the landfill and neighborhood of the landfill prior to the time she and her co-investors took ownership and control of the property and long before the initial date of any violation alleged in this matter.

Respondent has included with its response brief a copy of the neighboring landfill's entry in the Non-Hazardous Solid Waste Management and Landfill Capacity 2002 Annual Report October 2003. It indicates that RCS, Inc. is a subsidiary of Allied Industries, Inc., a large successful landfill company. Obviously, if Respondent is attempting to enter a new exhibit at this late date in the proceeding, the context of the exhibit must be relevant. This landfill is indeed the landfill identified in the record as the landfill developed next door, on property that was part of the parcel sold to Jersey Sanitation Corporation by Ralph Johnson. Obviously, the shareholders had sufficient resources to develop and/or sell, or otherwise transfer, a new landfill on a joining parcel of the original property to a sophisticated buyer, Allied Industries, Inc., who could afford to pay them, or otherwise compensate them, for the landfill and their landfill business. Given that Jersey Sanitation Landfill was closing, the new landfill came with a ready clientele. It is interesting to note that on page 7 of its response brief, Respondent Jersey Sanitation makes the point that its not in ***any*** landfill business anymore. (Emphasis added). Such a statement supports the testimony and documentation in the record of this proceeding that the Respondent had multiple landfills at one time.

Respondent's claims of financial inability, losses and lack of funds to adequately fund

compliance measures and meet its financial assurance requirements are hard to swallow given the complete history of the development of the 200 acre piece of property, and the intertwined business interests of Jersey Sanitation Corporation and RCS, Inc./Allied Industries.

In its response brief, Respondent objected to all argument contained within Complainant's brief regarding RCS, Inc. However, now, it seeks itself to enter a whole new exhibit concerning the very subject of its objection. Every argument contained within Complainant's original brief regarding RCS is based on documentation or testimony contained within the record. The exhibit attached to Respondent's brief is offered without proper foundation and without allowing Complainant to cross. Respondent objected at hearing to testimony relevant to RCS, Tr. at 365, 366, and 372, and yet it now defies its own objection and offers an exhibit on point with the testimony it originally objected to.

The phenomenon of the neighboring landfill is relevant, because as stated by Charlie King at hearing, it wasn't until RCS took over operation of Jersey Sanitation Landfill in 1995 that Jersey Sanitation Landfill showed significant improvement. So, in essence, Respondent Jersey Sanitation Corporation allowed the Jersey Sanitation Landfill to remain woefully out of compliance, with leachate flows existing on the property as a water pollution hazard, at times entering Sandy Creek, gas seeps emanating from the landfill, and gas and leachate impacting the groundwater at the landfill, while the RCS Landfill was being developed. Once RCS was developed and operating, by 1995, the RCS operator began to bring Jersey into compliance. But from 1989, the year the Respondent purchased the Jersey Sanitation Landfill, until 1995, the Jersey Sanitation landfill existed on the land with exposed refuse, leachate flows and gas problems. Even after 1995, landfill inspections indicate sporadic problems with leachate and gas.

Jersey Sanitation Corporation failed to exercise diligence with other compliance problems as well. Respondent Jersey Sanitation took nearly nine years to obtain siting

approval for the overheight condition at the landfill. The violation of elevation and contours was first cited in 1991. Why did it take Respondent nine years to address this violation?

Throughout the duration of Jersey Sanitation Corporation's ownership and control of the Jersey Sanitation Landfill, it has failed to conduct required groundwater assessments and has failed, in any manner, to address the exceedence of groundwater standards at the site. The impact to the groundwater was predicted to occur if proper controls and management were not exercised at the landfill. These predictions were first made in 1973. The report containing the predictions was included in a 1989 Jersey Sanitation Corporation submittal to the Illinois EPA. Respondent knew that leachate, gas and surface water controls were paramount to the protection of the groundwater, yet it failed to install and maintain the needed controls.

In this action, Complainant also seeks an order that would require Respondent to comply with the financial assurance provisions of its permit. Respondent was to submit revised cost estimates by March 15, 2001. To this day it has failed to submit cost estimates that were due by March 15, 2001.

Respondent's Concessions

Respondent has conceded to the violations alleged in Counts II, III, V and VI. It has conceded that it was in violation of its permit conditions concerning the landfill's elevation and contours during the time alleged in Count IV of the second amended complaint. It has conceded that it was in violation of the permit requirement that required it to maintain surface water ditches on the north and south sides of the landfill for the duration alleged in Count IV of the second amended complaint. Respondent has conceded that it was in violation of permit requirements concerning hours of operation, as alleged in Count IV of the second amended complaint. Respondent has conceded that it was in violation of Permit No. 1992-350-SP conditions A.3 and A.4, as alleged in Count IV, and it has conceded that it was in violation of special condition B.6 of Permit No. 1992-350-SP as alleged in Count IV.

The Count II violations discussed in Section I of Complainant's post-hearing brief concerned seven separate instances of violation. The violation of leachate flowing off-site into Sandy Creek was a repeat violation. Instances of leachate flowing beyond the confines of the landfill were observed three times after the initial violation in January 1991. Leachate pop-outs were cited twice. Evidence presented at hearing clearly showed that Respondent was provided copies of all inspection reports prior to the subsequent inspection. Respondent had notice of each alleged violation and an opportunity to correct it prior to the next inspection.

The Count II violations discussed in Section J of the Complainant's post hearing brief represent six instances of four violations each. Thus, five of the observations constitute repeat violations of the four infractions.

The violation alleged in Count III and discussed in Section K of the Complainant's post-hearing brief is refuse in flowing water at the landfill on February 17, 1994. The observation represented violations of Section 12(a) and (d) of the Act, 415 ILCS 5/12(a) and (d), as well as Section 21(o)(1) of the Act, 415 ILCS 5/21(o)(1). Thus, this count concerns three first time violations of refuse in water.

The conceded Count IV violations include elevation and contour violations existing at the site for 8 years and 253 days; failure to maintain north and south surface water drainage ditches at the site that existed at the site 2,736 days; and a violation of the landfill's hours of operation permit provision documented at the time of one inspection. Respondent was in violation of Permit No. 1992-350-SP permit conditions A.3 and A.4 for 1,734 days. Respondent was in violation of special condition B.6 of Permit No. 1992-350-SP for 2,130 days.

Respondent conceded to the violations alleged in Count V. In Count V, Complainant alleged four inspections at which instances of failure to place a compacted layer of six inches of cover on exposed refuse at the end of the operating day were observed. These observations represent four instances of violation of Section 21(o)(5) of the Act, 415 ILCS 5/21(o)(5) and 35

Ill. Adm. Code 807.305.

Respondent has conceded to the financial assurance violations alleged in Count V. Respondent failed to maintain financial assurance in an amount equal to its current cost estimate for closure and post-closure, and thus violated its Permit 1992-350-SP Condition B-3, thereby violating Section 21(d) and Section 21.1(a) of the Act, 415 ILCS 5/21(d) and 21.1(a), and 35 Ill. Adm. Code 807.601, from February 10, 1993 through November 5, 1998, a total of 2,093 days. In Complainant's original brief, in Section M.1, last two paragraphs, Condition B.3 and B.4 were confused. Condition B.3 is the requirement that financial assurance be fully funded. Condition B.4 is the requirement that the landfill provide documentation of its financial assurance funding within 90 days of the date of the permit. Respondent was in violation of Section B.4 of its permit for a total of 164 days. Thereby it violated Section 21(d) and Section 21.1(a) of the Act, 415 ILCS 5/21(d) and 21.1(a), and 35 Ill. Adm. Code 807.603 for 164 days.

Respondent has conceded to violation of Condition B.5 of Permit 1992-350-SP, the requirement to submit biennial cost estimates, from March 16, 1993 until October 5, 1999, a total of 2,393 days. Respondent is again out of compliance with its permit requirement to submit biennial cost estimates. It has been out of compliance with this provision from March 15, 2001 to the present.

The conceded violations represent many days of both first and repeat and ongoing violations. In that the statutory amount for the first instance of violation is $50,000 and the amount for an ongoing violation is $10,000 per day, the Complainant is certainly justified, on the basis of the conceded violations alone, in its request for a $65,000 penalty.

Further, the conceded violations serve as a basis for the Complainant's prayer for attorney fees. The record in this proceeding clearly shows that the Respondent received notice of the violations and had an opportunity to correct the violations. In many instances, it failed to do so. In some instances, it failed to do so for years. The ongoing violations were knowing and

willful violations of the Act, pertinent regulations and applicable permit conditions.

Disputed Violations

Respondent did not concede the following violations:

Count I	Groundwater Water Pollution
Count IV	Requirement to conform groundwater monitoring wells and facilities to the approved monitoring plan.
	Failure to provide a narrative demonstration that its water monitoring program is capable of determining groundwater quality flowing onto and unaffected by the landfill, assess current contribution of the existing landfill on groundwater quality and determine if release to groundwater is occurring by April 15, 1991.
	Failure to obtain a supplemental permit to conduct landscape waste compost operations.
	Failure to comply with Item 10, Attachment A, Permit No. 1992-350-SP.
	Failure to comply with Permit No. 1992-350-SP Attachment A, Special Conditions 5(a), 6(b), 8, 16, 20, 21 and 22.
	Violation of Section 21(d) and 22.17, 415 ILCS 5/21(d) and 22.17, and 35 Ill. Adm. Code 807.524(a) with respect to Permit No. 1999-209-SP.
Count VII	Closure Violations
Count VIII	Open Burning Violations

Count I Groundwater

The first portion of Respondent's discussion on groundwater issues consists of its claim that the Complainant is reaching back to permit conditions struck in the appeal of Permit 1999-209-SP.

Complainant has provided testimony regarding two general propositions. The first is that given the factual conditions at the landfill, that is, sample results showing exceedences of groundwater standards and results showing an increase in exceedences over time, both the

Complainant's and Respondent's groundwater experts recommend performance of a trend analysis and, potentially, a groundwater assessment. These measures are standard practices given sample results that indicate exceedence of the standards, and results that show an increase in the level of exceedences. The experts recommend that these practices be implemented at Jersey Sanitation Landfill. Further, the experts agree that the existing permit calls for the implementation of such practices. Citations to the testimony referenced here is provided in detail in Sections B, C, D, E, F and G of Complainant's original post-hearing brief.

Second, exhibits entered in the record of this matter, as set forth and described in Section F of Complainant's brief, set out the historical record of the long unanswered question as to whether the G103 monitoring well at the landfill is an appropriate upgradient well. This discussion traces the history of permit requirements that existed in Permit No. 1992-350-SP as well as Permit No 1999-209-SP. These exhibits clearly show that the permit conditions were not written in a vacuum. They were not written to merely mirror the Section 811 requirements. They were written by permit reviewers who were indeed informed by the field personnel's observations regarding this landfill, and the documentation, submitted by Jersey Sanitation Corporation itself, generated at the time of the development of this landfill that described the topography and geology and the need for leachate, gas and drainage controls to protect the groundwater. In the early 1990s, the permit reviewers acknowledged Inspector Rich Johnson's questions regarding the appropriateness of G103, and their own identical questions, and wrote conditions meant to address these concerns. The same held true in the mid 1990s, when the permit reviewers acknowledged the fact of exceedences at the landfill and the fact of the long unanswered question regarding the appropriateness of G103 that appeared in historical documentation, as well as the field's 1994 groundwater investigation, and required assessments and analysis be performed of the landfill's groundwater monitoring plan and the sample results that showed continuing exceedences of the standards. Citations and quotations

from the exhibits and testimony referenced in the paragraph are provided in detail in Sections F and G of Complainant's original post-hearing brief.

The geologists and engineers that were called as witnesses in this matter testified to the practices and recommendations that they considered standard to respond to the exceedences of groundwater standards evident at the Jersey Sanitation Landfill. The fact that these practices might resemble the conditions that existed in Jersey's permit, and that are required of Part 811 landfills, is not at all surprising. These are the very practices that engineers and geologists customarily utilize to address groundwater issues – issues that are evidenced by exceedence of the State's groundwater quality standards.

Respondent claims that the Illinois EPA permit writers approved the landfill's monitoring plan, and thus somehow gave its blessing to the configuration of the monitoring wells as they existed on the site. The permit writers did indeed issue permits that included the landfill's proposed monitoring plan, but they did so ***with conditions***. The landfill was to implement its plan in compliance with these additional conditions. Throughout the duration of Permit 1992-350-SP, and upon issuance of Permit 1999-209-SP and the appeal of that permit, the landfill failed to comply with permit conditions. If the landfill would have complied, the exceedences of standards would have been addressed by an assessment, which most likely would have included a trend analysis, and the question of the appropriateness of the G103 well would have been answered.

In the appeal of the 1999-209-SP permit, the Board struck groundwater conditions pertaining to assessments and statistical analysis. The pertinent decisions concluded that the existing language contained within the groundwater section of the landfill's permit application constituted a sufficient groundwater plan to meet the requirements of the Part 807 regulations.

Testimony elicited at hearing, as set forth above, indicated that the Respondent's own groundwater experts believe the existing permit language requires, given the exceedences

documented at the landfill, the performance of a trend analysis, Tr. for January 13, 2004 hearing date at 40 and 41, and also, potentially, performance of a groundwater assessment. Tr. 398-399.

In its reply brief, Respondent claims that Complainant is arguing a "mini-syllogism" that Respondent depicts as the following "Complainant appears to argue that because of certain section 12 alleged violations, remedial strategies must be employed, which, miraculously, appear to be exactly the same as the IEPA's stricken groundwater conditions."

Its true. Except the remedial strategies may not be exactly the same as the stricken conditions. The remedial strategies requested are those consistent with the language of the landfill's current permit. Count I of the second amended complaint consists of allegations that groundwater at the landfill exceeds groundwater standards. It also contains allegations that these exceedences and the non-compliant conditions at the landfill have resulted in violations of Section 12(a) and 12(d) of the Act, 415 ILCS 5/12(a) and (d). Complainant, in its prayer, is (1) asking the Board for a finding that the groundwater is exceeding standards and, based on this finding, (2) issue an order requiring Respondent to comply with its permit by adhering to the language in its permit that requires it to perform a trend analysis and then retain a professional engineering firm to consider the next step. Complainant has elicited testimony from both its own groundwater experts and the Respondent's experts regarding their opinions as to what the existing language requires. This testimony exists in the transcripts of this proceeding and has been presented and argued in Complainant's original post-hearing brief.

Respondent claims that Complainant has not met its burden of proof regarding its allegations of Section 12(a) and 12(d) violations relevant to groundwater. Respondent attempts to discredit Complainant's groundwater witness Karen Nelson in a discussion on page 13 of its response brief, but then turns around and relies on her testimony as a basis for his claims regarding evidence presented pertinent to the water pollution violations. Respondent cannot

have it both ways. Ms. Nelson's credentials have been entered in the record as Complainant's Exhibit 13. Her list of credentials more than speaks for itself. Respondent argues that the fact she has not spent a lot of time testifying in adversarial proceedings is somehow relevant to her credentials as a geologist. It is completely irrelevant. What is relevant is her professional experience working as a geologist. Not time spent testifying. As is evident from her resume and testimony, she has over 10 years field experience, she is a registered geologist, and she was selected by her employer to train other regional geologists in the field prior to her most recent appointment to a full-time training position.

Respondent, in its response, includes an absurd statement that Ms. Nelson completely misunderstood the site's geology. Ms. Nelson thoroughly understands the site's geology. It is Respondent's geologist who has never been to the site, and who has never done an investigation of the site. He admitted at hearing he was extrapolating information from the neighboring RCS site and applying it to the Jersey site. Ms. Nelson has patiently and painstakingly explained why such extrapolation is inappropriate and downright wrong given the field date available for this site. The field documentation, dating back to 1973, supports Ms. Nelson's testimony. It does not support Respondent's proffered guesswork.

Complainant has set forth, in great detail, the evidence presented in the record and at hearing that serves as the basis for its Section 12(a) and 12(d) allegations, and has argued these allegations in Sections B through H of its original brief. These arguments will not be repeated here. Complainant has met its burden. Respondent's case is completely void of any evidence that controverts Complainant's evidence. In its arguments, Respondent relies solely on the testimony of Complainant's witnesses that indicates that, due to the fact Respondent has completely abdicated its responsibility to address groundwater exceedences at the landfill, no work has been done to assess the exceedences. Thus, other sources have not been eliminated from the analysis. Respondent conveniently, in its argument, takes Complainant's

witnesses' testimony out of context. Both citations to the transcript, that attributed to Ms. Nelson and the testimony attributed to Ms. Munie, are surrounded and qualified by the witnesses' testimony that pursuant to the regulations, particularly 35 Ill. Adm. Code 807.313 and 807.315, the landfill cannot cause or threaten water pollution. It is the responsibility of the landfill to conduct proper assessments to ascertain the source of contamination. Testimony of Joyce Munie, Tr. 40-47. Despite permit requirements applicable to Jersey Sanitation Landfill for years, including years prior to the recent permit appeal, requiring Jersey to perform an assessment and confirm the appropriateness of its monitoring plan, the landfill has failed to do so.

The regulation found at 35 Ill. Adm. Code 807.315, a Part 807 provision, is particularly noteworthy at this juncture. It states, in pertinent part:

> Protection of Waters of the State
>
> No person shall cause or allow the development or operation of a sanitary landfill unless the applicant proves to the satisfaction of the Agency that no damage or hazard will result to the waters of the State because of the development and operation of the sanitary landfill.

Pursuant to this regulation, as well as Section 12(a) and 35 Ill. Adm. Code 807.313, Respondent must prove to the Illinois EPA that it is not existing as a hazard to waters of the State, which include groundwater, or is not otherwise contaminating waters of the State. Based on the evidence presented at hearing, groundwater sample results have indicated exceedences of the standard since 1991 at the landfill. The exceedences have increased in magnitude over the years. Respondent Jersey has failed to comply with all permit requirements designed to address the groundwater issues at the landfill. Respondent has not disputed, nor has it presented any evidence to contradict Complainant's assertions, that Respondent has not performed a single assessment of the groundwater at the site. Complainant has presented

evidence that the groundwater at the landfill is exceeding standards, the upgradient wells do not indicate exceedences and Respondent Jersey has completely failed to comply with 35 Ill. Adm. Code 807.315 and permit conditions requiring it to perform assessments consistent with the requirements of 35 Ill. Adm. Code 807.315. As a result, Jersey Sanitation is in violation of Section 12(a) and 12(d). Complainant has presented detailed evidence as to why this landfill does exist as a water pollution hazard upon the land – evidence that has been in the hands of Respondent since the day it purchased the landfill, if not before. The basic documentation was generated in 1973. Respondent itself submitted the documentation to the Illinois EPA.

Respondent makes an issue over the fact that Ms. Munie did not testify regarding the exceedence of groundwater standards at the site, and the issues regarding the landfill's monitoring plan. No such testimony was elicited from this witness, by either Complainant or Respondent. She was silent because she wasn't asked. She was identified to testify about certain given subject matter, and her testimony was kept within the disclosed realm of topics. Ms. Nelson was the regional geologist assigned to the Jersey Sanitation site, and thus she was the appropriate witness to testify regarding groundwater issues at the site.

Respondent labels Ms. Nelson's testimony regarding iron levels at the site as alarmist. She simply testified regarding the levels in the sample results and testified that the results were somewhat remarkable. This testimony was not alarmist. It was appropriate and elicited as testimony that would be helpful to the trier of fact in that it put the sample results into perspective.

Count IV Permit Violations

1. Respondent's violation of its permit requirement to conform its groundwater monitoring wells and facilities to the approved monitoring plan.

Complainant's presentation of evidence supporting this allegation, and its argument relevant to this evidence, appear in its post-hearing brief on pages 86-88. At hearing and in its

response brief, Respondent has not disputed the allegation that it did not conform its groundwater monitoring wells and facilities to the approved monitoring plan, and it has not presented any evidence offered to contradict the allegations.

Respondent has failed to plug well MW5. MW5 is not included in its current approved monitoring plan. Respondent has failed to submit an application for a supplemental permit to modify the groundwater monitoring program so as to provide for the maintenance of the MW5 well. In that Respondent has failed to plug the well or submit an application for modification of its monitoring plan, Respondent is in violation of Special Condition 13 of Permit 1989-177-SP and identical conditions contained in all subsequent supplemental permits. This violation has continued for over 13 years. Violation of this permit special condition constitutes a violation of Section 21(d)(1) and (2) and Section 21(e), 415 ILCS 5/21(d)(1), (2) and (2), and 35 Ill. Adm. Code 807.301 and 302.

2. Respondent's failure to provide a narrative demonstration that its water monitoring program is capable of determining groundwater quality flowing onto and unaffected by the landfill, assess current contribution of the existing landfill on groundwater quality and determine if a release to groundwater is occurring by April 15, 1991.

Complainant's presentation of evidence supporting the allegation that Respondent failed to comply with Special Condition 11(b) of Permit No. 1989-177-SP, and Complainant's argument relevant to this evidence, appear in Complainant's post-hearing brief on pages 89-93. At hearing and in its response brief, Respondent has not disputed this allegation, and it has not presented any evidence offered to contradict the allegation.

Respondent Jersey Sanitation failed to comply with the requirements of Special Condition 11(b) of Permit No. 1989-177-SP, from the time of the initial deadline of April 15, 1991 until new water monitoring program permit requirements went into effect on February 8, 1993. Respondent's failure to comply with Special Condition 11(b) is a violation of Section 21(d)(1) and (2) and Section 21(e), 415 ILCS 5/21(d)(1), (2) and (e), and 35 Ill. Adm. Code

807.301 and 302. The initial violation occurred on April 15, 1991. The continuing violation of the permit provision existed for 664 days.

3. Respondent's failure to obtain a supplemental permit to conduct landscape waste compost operations.

Complainant's presentation of evidence supporting the allegation that Respondent failed to obtain a supplemental permit to conduct landscape waste compost operations, and Complainant's argument relevant to this evidence, appear in Complainant's post-hearing brief as Section L.6 on pages 93 to 95.

In its reply brief, on page 8 and 9, Respondent states that Pamela Shourd testified at hearing that the composting was done on farm property and not permitted landfill property. It was done as an accommodation to customers.

Ms. Shourd's original claims that the landscape waste was not within the permit boundary were made in a letter to the Illinois EPA dated December 13, 1990, and entered in this proceeding as Parties Exhibit 11. Upon receipt of her claims that the landscape waste was not within the boundary, inspector Rich Johnson conducted a re-inspection and reviewed documentation concerning the permit boundaries. Upon re-inspection and review of the documentation, he determined that the landscape waste was indeed partially within the landfill boundaries.

As set forth in Complainant's post-hearing brief, at the time the landscape waste was observed at the property, the landfill operator told the inspector that the landfill had been receiving weekly loads of landscape waste from the City of Jerseyville. This is documented in the inspection reports. On page 94 of Complainant's post-hearing brief, an excerpt from the January 23, 1991 inspection report indicates that inspector Rich Johnson reviewed the landfill's permit boundary drawings and determined that the area where the landscape waste was stockpiled has been placed in part within the landfill boundaries. Landscape waste was

observed on the landfill site in August 1990, January 1991 and again in May of 1991, a period of 10 months. On the occasion of each inspection, Respondent was told it could not accept and maintain waste on the site for composting without a supplemental permit.

Respondent, in its reply brief, makes that statement that Mr. Johnson's determination that the landscape waste was stockpiled within permit boundaries was "unsubstantiated". Respondents characterization is incorrect. The inspector did check his observations against drawings of the permit boundaries and found that the waste was at least partially within permit boundaries. In addition, the landfill operator himself indicated that the landfill was accepting the waste for composting. No evidence has been presented that the waste was ever applied to a farm field.

Respondent argues that Pamela Shourd claims that the landscape waste was to be applied to adjacent farm property. As documented in the inspector's report regarding his January 23, 1991 inspection, at the time of the inspection, the adjacent farm field mentioned in a letter from Ms. Shourd as the location where the waste would be applied, was in a crop, most likely winter wheat. In that the field was in a crop, waste could not be incorporated into the field until the crop was harvested.

At the time of the May 21, 1991 inspection, the inspector documented that the landfill operator informed him that the landfill was still receiving an occasional load of landscape waste from the City of Jerseyville. The operator told him the landfill no longer intended to compost landscape waste. Nonetheless, the inspector observed that the landfill appeared to still be handling the City's landscape waste. At the time of the inspection, the operator indicated that one of the shareholders had removed some of the stockpiled landscape waste. The operator did not know where the shareholder had taken it. At the time of the inspection, the bed of the dump truck at the site was full of tree and shrub trimmings.

Evidence presented by Complainant clearly shows that the landfill accepted landfill

waste for composting, the landfill did not have a permit for composting at the time, that landscape waste was being accepted from the City of Jerseyville for composting and stockpiled at the landfill site within the permit boundaries. No evidence has been presented by Respondent that the waste was ever applied to a farm field at agronomic rates. It is apparent from the inspection reports that one of the shareholders, John Cronin, eventually gathered up the landscape waste stockpiled at the site and hauled it off to some unreported, undisclosed location.

Respondent's acceptance of landscape waste at the landfill site was an unpermitted activity, and thereby constituted a violation of Section 21(d)(1) of the Act, 415 ILCS 5/21(d)(1). The first violation was observed on August 30, 1990. The violation was continuing and on-going at least up until the time of the May 21, 1991 inspection. The violation continued for 263 days.

4. Respondent's failure to comply with Item 10 contained in Attachment A to Permit No. 1992-350-SP, requirement that padlocked protective cover must be installed on exposed well casings.

Complainant's presentation of evidence supporting the allegation that Respondent failed to comply with Item 10 of Attachment A of Permit No. 1992-350-SP, and Complainant's argument relevant to this evidence, appear in Complainant's post-hearing brief on page 97. At hearing and in its response brief, Respondent has not disputed this allegation, and it has not presented any evidence offered to contradict the allegation.

Illinois EPA inspector Charlie King documented his observation that monitoring well G104 was observed unlocked at the time of the February 17, 1994 inspection. Parties Exhibit 31, page 6 of the narrative and photo No. 4 from roll #124, and page 10 of the narrative, item L.

Respondent failed to comply with Item 10 of Attachment A of its permit at the time of the February 17, 1994 inspection, and thereby violated Section 21(d)(1) and (2), 415 ILCS 5/21(d)(1), (2), and 35 Ill. Adm. Code 807.301 and 302. This observation constituted a single

occurrence of the violation.

5. Respondent's failure to comply with Permit No. 1992-350-SP, Attachment A Special Conditions 5(a), 6(b), 8, 16, 20, 21 and 22.

Complainant's presentation of evidence supporting the allegations that Respondent failed to comply with Permit No. 1992-350-SP, Attachment A Special Conditions 5(a), 6(b), 8, 16, 20, 21 and 22, and Complainant's argument relevant to this evidence, appear in Complainant's post-hearing brief on pages 97 through 102. At hearing and in its response brief, Respondent has not disputed these allegations, and it has not presented any evidence offered to contradict the allegations.

Respondent's failure to comply with Permit No. 1992-350-SP, Attachment A Special Conditions 5(a), 6(b), 8, 16, 20, 21 and 22 has resulted in continuing exceedences of groundwater standards at the landfill, and water pollution. Exceedences of the standards have been detected in sample results from the landfill since 1991.

The duration of each violation is set forth in Section M.4, pages 97 through 102, of Complainant's post-hearing brief.

6. The Respondent's violation of Sections 21(d) and 22.17, 415 ILCS 5/21(d) and 22.17, and 35 Ill. Adm. Code 807.524(a) with respect to Permit No. 1999-209-SP.

Complainant's presentation of evidence supporting the allegations that Respondent violated Sections 21(d) and 22.17, 415 ILCS 5/21(d) and 22.17, and 35 Ill. Adm. Code 807.524(a) due to its failure to comply with various provisions of Permit No. 1999-209-SP, and Complainant's argument relevant to this evidence, appear in Complainant's post-hearing brief as Section N on pages 102 through 104. At hearing and in its response brief, Respondent has not disputed these allegations, and it has not presented any evidence offered to contradict the allegations.

As stated in Complainant's post-hearing brief regarding these allegations, inspector Charlie King's observations of ponded and standing water, gas releases and gas odors,

crevices and rills, dead and stressed vegetation and a leachate pop-out at the time of the June 6, 2000 inspection is documented evidence of Respondent's failure to comply with Permit No. 1999-209–SP Special Condition C.5 and paragraph 1(c) of its Post-Closure Care Plan, and thereby is evidence of Respondent's violation of Sections 21(d)(1) and (2) and Section 22.17 of the Act, 415 ILCS 5/21(d)(1),(2) and 22.17, and 35 Ill. Adm. Code 807.524(a).

Count VII Closure Violations

Respondent's failure to timely complete closure and comply with closure requirements.

Complainant's presentation of evidence supporting the allegations that Respondent failed to timely complete closure and comply with closure requirements, and Complainant's argument relevant to this evidence, appear in Complainant's post-hearing brief as Section Q on pages 114 through 119. At hearing and in its response brief, Respondent has not disputed these allegations, and it has not presented any evidence offered to contradict the allegations.

As stated in Complainant's post-hearing brief in regard to these allegations:

It is documented in the report for the January 21/February 17, 1994 inspection that the time of the inspection, Respondent Jersey Sanitation had not filed a plat of the landfill with the Jersey County Record of Deeds. Parties Exhibit 31, page 12 of the narrative. Parties Exhibit 41 includes, as Attachment 3, documentation that a plat of the landfill was filed with the Jersey County Recorder of Deeds, in compliance with closure requirements, on January 31, 1997. Respondent failed to comply with closure requirements requiring it to file a plat with the county recorder in a timely manner, and thereby violated 35 Ill. Adm. Code 807.318(c). The first documented violation of this provision occurred at the time of the February 17, 1994 inspection. The violation was ongoing until January 31, 1997, or a total of 1,078 days.

Respondent's Permit No. 1999-209-SP, issued October 5, 1999, acknowledged receipt of certification of completion of closure for the landfill.

Respondent failed to establish and maintain final cover at the landfill 60 days after

ceasing to accept waste, and in fact did not establish final cover until October 5, 1999, and thereby violated Section 21(d)(1) and (2) and 21(o)(6) of the Act, 415 ILCS 2/21(d)(1), (2), and 21(o)(6), and 35 Ill. Adm. Code 807.305(c). The first violation of these provisions occurred on December 1, 1992. These violations continued until October 5, 1999, a total of 2,497 days.

Respondent failed to take remedial action to abate gas after it ceased accepting waste and as it sought to close the landfill, and thereby violated 35 Ill. Adm. Code 807.381(b). Detections of gas odor and gas releases were documented by inspectors at the time of the November 18, 1998 and June 6, 2000 inspection.

Respondent failed to close the landfill in a manner that adequately controlled post-closure releases to groundwater and surface waters and to the atmosphere and thereby violated 35 Ill. Adm. Code 807.502. The first violation of this provision occurred on September 18, 1992. The violations continued until October 5, 1999, a total of 2,557 days.

Count VIII Open Burning

Respondent's violation of open burning provisions.

Complainant's presentation of evidence supporting the allegations that Respondent conducted open burning at the landfill, and Complainant's argument relevant to this evidence, appear in Complainant's post-hearing brief as Section R on pages 119 through 122. Also relevant to these allegations is the factual evidence presented in Complainant's brief in Section L.6 on pages 93 to 95.

Respondent contends, based on Pamela Shourd's testimony at hearing, that the landscape waste fire at issue did not occur on any part of the permitted landfill. Respondent acknowledges that the Illinois EPA inspector who observed the burning material disagrees with Ms. Shourd's assertion, and then Respondent goes on to state that the inspector has no basis to believe he had a better understanding of the permit boundaries than Ms. Shourd.

As noted in Section L.6, upon receipt of Ms. Shourd's letter, dated December 13, 1990,

and entered in this proceeding as Parties Exhibit 11, upon receiving her claims that the landscape waste was not within the boundary, inspector Rich Johnson conducted a re-inspection and reviewed documentation concerning the permit boundaries. Upon re-inspection and review of the documentation, he determined that the landscape waste was indeed partially within the landfill boundaries.

The waste that was burning was landscape waste that Respondent has admitted to accepting and receiving at the landfill with the intent of conducting a composting operation. The landscape waste was being delivered to the landfill by the City of Jerseyville. The waste was being stockpiled at the landfill as the landfill explored the means by which it would conduct the compost operation. It was waste accepted by the landfill, under control of the landfill and stockpiled by the landfill. As stated in Complainant's original brief, the landfill operator could not provide the Illinois EPA inspector with any details as to why the waste was on fire. However, the operator was attempting to extinguish the fire by placing soil on it. Smoke continued to be emitted from the landscape waste pile while the inspector was on site.

Respondent caused or allowed open burning to occur at the landfill at the time of the August 30, 1990 inspection, and thereby caused, threatened or allowed the discharge of contaminates into the environment, in violation of Section 9(a) and Section 21(o)(4) of the Act, 415 ILCS 5/9(a) and 21(o)(4). Respondent caused or allowed the open burning of waste not exempt from regulation, in violation of Section 9(c) of the Act, 415 ILCS 5/9(c), and 35 Ill. Adm. Code 237.102.

<u>Previously adjudicated violations</u>

Respondent's claim that Complainant cannot seek enforcement regarding violations cited in January 23, 1991 inspection report that were not the subject of the March 21, 1991 administrative citation.

On page 9 of its reply brief, Respondent makes the claim that Complainant cannot seek enforcement of violations cited in the inspector's report for his January 23, 1991 inspection in

this proceeding, that were not the subject of the March 21, 1991 administrative proceeding.

Two violations were cited in the March 21, 1991 administrative citation. Complainant acknowledged these two violations in its original brief, as follows:

On page 75 of the brief: On March 21, 1991, the Illinois EPA filed an administrative citation against Jersey Sanitation. Included in the allegations was violation of Section 21(p)(2) of the Act, Ill. Rev. Stat. 1989, ch. 111 ½ par. 1021(p)(2). Violation of what in 1991 was Section 21(p)(2), was cited in the second amended complaint of the instant action as Section 21(o)(2), 415 ILCS 5/21(o)(2). The basis of the allegation cited in the March 21, 1991 administrative citation was the January 23,1991 inspection conducted by Rich Johnson. The report for that inspection is included in the record of this proceeding as Parties Exhibit 10. Respondent Jersey Sanitation Corporation did not file a Petition for Review in response to the administrative citation, and paid the penalty demanded in the citation on April 29, 1991. Parties Exhibits 11, 12, 13, 14, 16 and 17. Given that the January 23, 1991 violation of Section 21(o)(2) was satisfied with payment of administrative citation penalty, Complainant is not seeking relief for that allegation herein. However, evidence of the violation is being brought forth here as support for the Complainant's allegation that subsequent violations of Section 21(o)(2) were ongoing and repeat violations.

On page 106 of the brief: On March 21, 1991, the Illinois EPA filed an administrative citation against Jersey Sanitation based on the Illinois EPA's inspectors' observations at the time of the January 23, 1991 inspection. An allegation of uncovered refuse was included among the violations cited in the administrative citation. The report for that inspection is included in the record of this proceeding as Parties Exhibit 10. Respondent Jersey Sanitation Corporation did not file a Petition for Review in response to the administrative citation, and paid the penalty demanded in the citation on April 29, 1991. Parties Exhibits 11, 12, 13, 14, 16 and 17. Given that violation of uncovered refuse at the time of the January 23, 1991 inspection was

satisfied by payment of the civil penalty assessed pursuant to the previous administrative citation, Complainant is not seeking relief for that allegation herein. However, evidence of the violation is being brought forth as support for the Complainant's allegation that subsequent violations of daily cover provisions were ongoing and repeat violations.

Section 31.1 of the Act, 415 ILCS 5/31.1, states, in pertinent part:

> (a) The prohibitions specified in subsection (o) and (p) of Section 21 of this Act shall be enforceable either by administrative citation under this Section or as otherwise provided by this Act.

Respondent states in its reply brief that "As a matter of law, the IEPA cannot proceed both of (sic) the basis of administrative citation and straight enforcement . . ." Respondent cites no law in support of its argument.

Complainant has not and would not proceed in this enforcement action regarding the same violations cited in the administrative citation. However, it is proceeding regarding other violations cited in the January 23, 1991 inspection report. The Act clearly states that Section 21 subsection (o) and (p) violations can be enforced by either administrative citation or as otherwise provided by the Act. Contrary to Respondent's bold statement, there is no basis in law for Respondent's proposition that Complainant cannot proceed regarding violations that have not been the subject of past adjudication.

Advantage Gained Due to Non-Compliance

At hearing and in its brief, Complainant presented testimony and argument regarding a benefit calculation conducted by Blake Harris, an accountant with the Illinois EPA's Waste Reduction and Compliance Section, Bureau of Land, that showed the advantage Respondent Jersey Sanitation Landfill gained from its non-compliance with financial assurance requirements. The benefit realized by Respondent was calculated to be $25,233.53. Citations to testimony and documents that provided an explanation of and basis for the calculation

appear on page 113 of Complainant's post-hearing brief.

Respondent, in its response brief, claims that Complainant's calculations were in error because it should not have assumed that Jersey Sanitation Corporation had sufficient resources to meet its financial assurance requirements.

Respondent, in this statement, reveals is own fundamental error in judgment in evaluating this testimony. The calculation, as set forth in the brief and by Mr. Harris at hearing, is a calculation to put into dollars and cents the unfair advantage Jersey Sanitation reaped for itself by not complying with financial assurance requirements compared to landfills that complied with the regulations. Respondent Jersey Sanitation does not have a choice as to whether it complies with the regulations or not. By law, it must comply. The calculation shows the advantage it gained by its non-compliance.

Secondly, Respondent claims, in its argument regarding Jersey Sanitation's sufficiency of resources, that "the unrebutted evidence in this case reveals that every cent of money that came into the landfill, at least from 1989 on, was put toward paying not only for proper landfill operation, but also to fund the closure/post-closure account." Complainant disputes that such evidence is unrebutted. There is no financial documentation of Jersey Sanitation Corporation in the record. There is a single statement made by Pamela Shourd that every cent went into the landfill. There is also plenty of evidence in the record of business conducted by these shareholders on the remainder of the 200 acre property. The subject landfill took up 10 of the 200 acres. That left plenty of room for the development of the RCS Landfill immediately south of the Jersey Sanitation Landfill.

It's important to remember, as Charlie King testified, that the Jersey Sanitation Landfill did not show signs of significant compliance with cover requirements, including the control of leachate and gas, until 1995 when RCS took over operation of the Jersey Sanitation Landfill.

As the exhibits in this case show, the uncovered refuse, leachate seeps and flows and

erosion problems at this landfill continued sorely unresolved at the time of the 1994 inspections. In 1994, leachate flows were still reaching Sandy Creek.

Respondent states on page 16 of its response brief "It is simply absurd to suggest that Jersey Sanitation reaped any economic benefit through this ordeal. Certainly that is not the case with the current shareholders, whose only benefit, if it could be called such, is that they no longer have to live next to a public health hazard."

The shareholders of Jersey Sanitation Corporation ran their own public health hazard, when they owned and controlled Jersey Sanitation Corporation Landfill, from 1989 through 1994. They may not have found it offensive because it was their own nuisance, not someone else's. Inspectors documented uncovered refuse, leachate flows and seeps, leachate flowing directly into Sandy Creek, uncontrolled gas, deep gullies where cover existed on the landfill and uncontrolled surface drainage time after time after time.

Respondent contends that Mr. Harris is not an accountant because he has not sat for the certified public accountant's examination. Mr. Harris is identified as an accountant. His title with the Illinois EPA is "accountant". His credentials were entered in this proceeding as Complainant's Exhibit 3 and the list of credentials speaks for itself.

Respondent also takes issue with Complainant's reliance on the $9,000 cost figured for assessment that appeared in one of Respondent's permit applications. As is obvious from the record in this proceeding, Respondent was under an obligation for many years prior to the permit appeal to conduct a groundwater assessment. The landfill monitoring wells were showing exceedences, the upgradient wells were not showing exceedences, the Illinois EPA had repeatedly included permit conditions in the permit for the landfill to conduct an evaluation of its monitoring plan due to the long-standing questions regarding G103, and the level of exceedences was increasing. Pursuant to 35 Ill. Adm. Code 807.315 and the landfill's permit conditions, as assessment was to be done. The landfill has never done a groundwater

assessment. Thus, the $9,000 figure is certainly a legitimate part of any cost savings calculation.

RCS Landfill

Respondent claims that Complainant is attempting to make RCS Landfill a party to this proceeding. Nothing is further from the truth.

Respondent has now offered a new exhibit with its response brief, which was not properly admitted at hearing. No foundation has been laid for this exhibit and the Complainant has not had a chance to cross.

Complainant objects to the exhibit.

However, at this late juncture, Respondent, with this exhibit and his own argument, lays out the nature of RCS Landfill.

Complainant fully explains the relevancy of RCS Landfill in the first section of this brief. RCS Landfill is only relevant to Respondent's claims of innocence, inability to pay, and Respondent's mischaracterization that this Respondent's sole interest was to abate a neighboring nuisance. Respondent obtained the Jersey Sanitation Landfill site in a complete property parcel of 200 acres. While the original Jersey Sanitation Landfill was existing on the land with leachate flows, exposed refuse, refuse in standing water, deep gullies in the landfill cover, and groundwater sample results that showed exceedences of groundwater standards for years, RCS Landfill was being developed 500 feet south of the existing landfill. It took Jersey Sanitation Corporation seven years, from the date Jersey Sanitation Landfill stopped accepting waste to certify the landfill closed. It took the landfill nearly nine years to obtain county siting approval for the landfill's overheight condition. While Jersey Sanitation Corporation Landfill existed on the land as a source of water pollution and a water pollution hazard, RCS Landfill was being developed 500 feet away. It wasn't until RCS Landfill took over operation of Jersey Sanitation Landfill, did the landfill operator become promptly and properly responsive to

compliance problems.

Reply to Respondent's Discussion on the History of Jersey Sanitation Corporation

Complainant, at hearing, objected to all testimony of Pamela Shourd concerning dates prior to the date of the first alleged violation that is the subject of this enforcement action, which is August 1990. Complainant also objected to all testimony elicited from Pamela Shourd regarding the previous owner. The testimony is irrelevant to this action. The experiences Ms. Shourd had with the landfill prior to the time she, with other shareholders, bought the landfill, are irrelevant to the violations alleged in the complaint. And, the reasons she purchased the landfill are irrelevant. What is relevant is the black and white fact that she and the other shareholders purchased the landfill and took control of it in November 1989, and from that day forward were responsible for the condition of the landfill.

No one forced the current shareholders of Jersey Sanitation Corporation to buy the Jersey Sanitation Corporation Landfill. In fact, as is cited in the testimony, the Illinois EPA warned the neighbors not to purchase the property due to the challenges it presented. Contrary to Respondent's claim that it purchased the landfill to abate the nuisance, what in fact happened is that Respondent maintained its own nuisance at this site for six years after purchasing the site. But the nuisance the neighbors now owned and controlled wasn't nearly as offensive to them, because now it was their nuisance. They weren't about to complain about themselves. But non-shareholder neighbors complained about the landfill after the current shareholders of Jersey Sanitation Corporation took control of the property. A list of specific complaints submitted to the Illinois EPA appears on page 2 of the narrative included with the Illinois EPA report for the August 30, 1990 inspection. Parties Exhibit 7.

What comes to light from the record in this matter is that these neighbors saw a business opportunity in the landfill property. It is obvious from the record that the Jersey Sanitation Corporation Landfill was a landfill developed out of need. It was originally developed

to respond to an emergency need for landfill capacity. It continued to service the City of Jerseyville. The City of Jerseyville was a client of Respondent while it was operating the Jersey Sanitation Corporation Landfill. When Jersey Sanitation Corporation Landfill closed, it closed with yet viable clientele. A landfill right next door could service the same clientele. A properly developed landfill with an established, ready clientele very well might be profitable, particularly if a large landfill company, such as Allied, was willing to buy it.

In its reply brief, Respondent spends a great deal of time reviewing Ms. Shourd's testimony about her memory of the condition of the landfill before she purchased it. In its brief, Respondent admits that Ms. Shourd was advised by the Illinois EPA not to purchase the landfill. Respondent notes that the former owner was issued an administrative citation. Mr. Shourd testified that at the time the Illinois EPA attempted to discourage her from purchasing the landfill, the Illinois EPA inspector advised her that the agency "would soon be cracking down on the current owner of the landfill," in her words. Tr. at 361, Complainant's post-hearing brief page 133.

Ms. Shourd testified at hearing that the current shareholders began considering purchase of the landfill when they heard the former owner wanted to sell it.

Mr. Johnson put the landfill up for sale after he had received an administrative citation.

The first action taken against Jersey Sanitation Corporation also was an administrative citation. Evidence of the citation is included in the record as Parties Exhibits 11, 12, 13, 14, 16 and 17. In that conditions of non-compliance persisted at the landfill, the next action taken against Respondent was an enforcement action.

The Illinois EPA had been positioned to proceed against the former owner. Ms. Shourd was advised that the Illinois EPA would be proceeding against the former owner. Both Ms. Shourd and the Illinois EPA possessed documentation of and field observations regarding the challenges presented by this landfill. And yet the shareholders purchased it anyway. They

purchased it with no equipment and insufficient money to purchase equipment much less properly close the landfill. Ms. Shourd is quoted in Respondent's response brief as follows: "we didn't really have the money to just–just be able to buy equipment and bring it in and close it up. We had to operate it for awhile to try and generate enough income to shut it down." Tr. 346.

Also in Respondent's brief is a statement that clearly shows that the Respondent corporation did not have a working knowledge of the management of a landfill when it took control of Jersey Sanitation Landfill. On page 4 of the brief, it states: During the following two years, the new stockholders themselves learned to operate the land, and hired (and fired) numerous employees in an effort to adequately staff the facility. Tr. 347-349.

Respondent Jersey Sanitation Landfill did not truly start the process of "shutting down" Jersey Sanitation Landfill until 1995. In 1994, Illinois EPA inspectors observed significant cover compliance problems at the landfill. In 1995, as Charlie King testified at hearing, significant improvement was achieved with RCS, Inc. took over operation of the landfill. The groundwater investigation for the development of RCS, Inc. was conducted in 1992, according to testimony elicited from Respondent's groundwater expert. In 1992, at a time when Jersey Sanitation Corporation should have been completing closure at the Jersey Sanitation Corporation Landfill, Respondent's groundwater expert was conducting a groundwater investigation at the site of what today is the RCS, Inc. landfill. RCS, Inc. was in operation with a certified operator by 1995, who then began caring for both landfills.

Also on page four of Respondent's response brief, Respondent indicates Jersey Sanitation Corporation had ten pieces of equipment by 1992. The Respondent states: "By the time the facility was closed in 1992, the landfill had purchased ten pieces of equipment, and was leasing another; the purpose of all of the equipment was "in order to compact trash, haul dirt over there, and cover it up and compact the dirt." If the landfill was closing, why would the shareholders be continuing to accumulate equipment? Where was it being used to compact

trash and haul dirt, if the landfill was closed? And if all this equipment was dedicated solely to the Jersey Sanitation Corporation Landfill, why would the landfill continue to experience the exposed refuse problems, leachate seep and flow issues, and deep gullies in the cover that are evident in the photos in the 1992 and 1994 inspection reports?

In its response brief, Respondent claims, on page 4, that "After the landfill quit accepting trash in September 1992, the revenue stream to pay for the improvements also ceased. During the time we accepted waste, we paid into the [closure/post-closure] fund and tried to have the equipment and dirt we needed to cover up the landfill. From that point on, we had no income." Tr. 352-353. Virtually no profit was realized by the shareholders through the efforts, aside from a peace of mind from knowing that the terrible nuisance located next to their properties was abated – "every cent that came into that landfill went into either the post-closure or closure/post closure fund or into equipment to operate the landfill and to cover it up and close it."

As stated in Complainant's post-hearing brief, it is obvious from the record of this proceeding that early on Ms. Shourd and her fellow shareholders took advantage of corporate liability shields, when they parceled the original 200 acres and created CRS, Partnership, as Ms. Shourd herself described in Parties Exhibit 11, page 2 of her December 13, 1990 letter. All of this is masked by a claim that the shareholders "abated a terrible nuisance". No, the shareholders merely converted the nuisance into their own nuisance, which amazingly was not offensive to them.

Respondent's brief is full of accusations that the Illinois EPA was hostile to Jersey Sanitation Corporation. The best defense is always a good offense. It is apparent that the Illinois EPA was not the hostile party. The true hostile, uncooperative party has been Jersey Sanitation Corporation. And for good reason. Hostility keeps everyone at a distance from each other. The Jersey Sanitation Corporation had business interests to protect, and business opportunities to pursue. Keeping the communications hostile maintained distance and tactics of

delay allowed one landfill to be developed while the other landfill stood in non-compliance. Most egregious, it allowed the shareholders, to date, to avoid all costs associated with addressing the groundwater problems at Jersey Sanitation Corporation landfill. Hostility, poor communications, delay – it all worked in the shareholders' favor.

As set forth in Complainant's post-hearing brief on page 134, Ms. Shourd's own belief system brought a demeanor of conflict and resistance into efforts to bring the subject site into compliance.

Respondent Jersey Sanitation Corporation brought the Jersey Sanitation Landfill into compliance when it was convenient for them to do so. They completed compliance groundwork at Jersey Sanitation Landfill once RCS, Inc. was available to do the work in 1995, despite the fact they allegedly had 11 pieces equipment available in 1992. They obtained siting approval almost nine years after they were originally cited for non-compliance. They obtained certification of closure seven years after they ceased accepting waste. It obviously has never been convenient for the shareholders to address groundwater problems at Jersey Sanitation Corporation landfill – problems that have been aggravated by the fact the exposed refuse, gullying, and surface water drainage problems, as well as leachate and gas production were allowed to continue.

On pages 5 and 6 of its response brief, Respondent appears to be making the argument that at the time the Illinois EPA acknowledged receipt of Jersey Sanitation Corporation's certification of completion of closure, the landfill was in compliance with all permit, regulatory and statutory requirements. Whatever Respondent's statement is supposed to mean or infer, the truth is that a certification of closure merely certifies exactly that which is stated on page 6 of Parties Exhibit 41, the landfill's Affidavit for Certification of Closure, dated June 7, 1999. The narrative included with the affidavit, starting on page 13 of the exhibit, indicates that although final cover work was completed, surveyed, tested and certified at the landfill in September of

1994, a delay was caused due to the issue of the final elevation and contours of the landfill. Respondent did not obtain siting approval for the overheight conditions at the landfill until March 8, 1999.

As stated in the affidavit of certification of closure, the subject matter of the certification is the establishment of the dirt and vegetative final cover, in compliance with regulations, and confirmation of final contours.

Respondent cites the case of *Bradd v. Illinois EPA*, PCB 90-173 (May 9, 1991), and 35 Ill. Adm. Code 807.508 in support of its statement on page 6 that in granting that [it is believed Respondent is referencing the fact the Illinois EPA acknowledged a closure date of September 30, 1994 for the subject landfill], of course, the IEPA acknowledged, both as a matter of fact and of law, that the landfill was in compliance with all such requirements as of that September 30, 1994.

What the Illinois EPA actually did in the 1999 supplemental permit, which also acknowledged certification of closure, was approve the landfill's groundwater monitoring plan with conditions.

In *Bradd,* Mr. Bradd's certification of closure was denied for five reasons, one of which was his failure to submit a permit application assessing the current groundwater conditions at his site and proposing an adequate groundwater monitoring program. *Bradd v. Illinois EPA*, PCB 90-173 (May 9, 1991), slip op at 3. The condition requiring that Mr. Bradd submit the assessment and program plan was special condition 15(b) of his permit. The Board held: "Section 40(a)(a) of the Act (Ill. Rev. Stat. 1989, ch 111 ½ par. 1040(a)(1)) provides, "If the Agency refuses to grant or grants with conditions a permit under Section 39 of this Act, the applicant may, within 35 days, petition for a hearing before the Board to contest the decision of the Agency." (Emphasis added) (see also 35 Ill. Adm. Code 105.102(a)(2)). Because Mr. Bradd never appealed Special Condition 15(b) of Supplemental Permit No. 1988-248-SP or the

Agency's April 6, 1989 denial of his proposed groundwater monitoring program within the above statutory time frame, he has waived any objection to the Agency's imposition of Special Condition 15(b) and its denial of his proposed groundwater monitoring program. . . . . the fact that Special Condition 15(b) of Supplemental Permit 1988-248-SP had not been satisfied was a sufficient basis for the Agency to deny Mr. Bradd's Affidavit for Certification of Closure and not issue a Certificate of Closure for the landfill. *Bradd,* slip op at 7-8.

The *Bradd* case does not stand for the proposition that issuance of Certification of Closure constitutes acknowledgment by the Illinois EPA that a landfill is in compliance with all permit, regulatory and statutory requirements. The case upheld the Illinois EPA's denial of a Certificate of Closure when a landfill failed to meet a special condition requiring submission of an assessment and acceptable groundwater monitoring plan. This does not preclude the Illinois EPA, in its discretion, from approving a groundwater monitoring plan with conditions rather than denying the plan altogether. In the case of Jersey Sanitation Corporation Landfill, the Illinois EPA approved the landfill's monitoring plan with conditions.

Contrary to the characterization made by Respondent on page 5 of its response brief, that the Illinois EPA's October 5, 1999 letter (which is actually the issuance of the 1999 supplemental permit) acknowledged compliance with all permit, regulatory and statutory requirements, nothing in the October 5, 1999 document indicated any such thing. The document is entered in the record as Parties Exhibit 42.

Respondent concludes its "history" section of its brief by again characterizing testimony Complainant has elicited from groundwater expert witnesses regarding recommended methods to address the exceedences of groundwater standards at this landfill, as the "stricken conditions". Complainant has elicited testimony from groundwater experts as to what actions should be taken, given the current permit provisions, to address groundwater exceedences at the site. Complainant, in its prayer for relief, has asked the Board to order the Respondent to

comply with its existing permit. Respondent's insistence on continually referencing the "stricken conditions" is an argument manufactured to divert attention from and aggravate Complainant's efforts to meet its objective of obtaining compliance at the subject facility.

Procedural Objections

Respondent has devoted three and a half pages of its 23 page response brief to responding to Complainants procedural objections.

Respondent claims Complainant has overstated its objections, to create a sideshow to divert attention from what Respondent labels Complainant's weak groundwater case.

There is nothing weak about the People's groundwater case. In addition to the fact evidence presented by Complainant strongly supports the allegations and requested remedy, Respondent has completely and totally failed to controvert the evidence. The only thing Respondent offers is testimony regarding the Respondent's own abdication of its responsibility to address groundwater exceedences at the site, and it does so by taking the testimony completely out of context.

In its response brief, Respondent continues to argue about Complainant's Exhibit 16 and 20, and Ms. Nelson's rebuttal testimony. As has been argued *ad nauseam* in this matter, it is Complainant's position that no testimony, and no exhibit, provided to Respondent constituted a new or surprise piece of evidence, or new or surprise opinion. Complainant's Exhibits 16 and 20, as established in the foundation testimony elicited regarding these exhibits, are simply a tabulation and summarization of the factual evidence. The fact that it was prepared by Ms. Nelson relatively close in time to the date of hearing proves nothing other than these exhibits are exactly what Complainant claims they are – a tabulation and summarization of data, and for that matter, it's a tabulation of the Respondent's own data. The foundation laid for these exhibits speaks for itself. Later testimony elicited from Karen Nelson upon rebuttal, was truly rebuttal testimony and not a new opinion. She was responding to Respondent's witness'

testimony.

Respondent, on page 21 of its brief, complains that Complainant received an accommodation of time to depose the two new witnesses Respondent identified the night before the continuance of the hearing, and Respondent was not given the same opportunity upon production of Ms. Nelson's "new" opinion. First, Respondent never asked for such accommodation. Second, Ms. Nelson's testimony on the day the hearing was continued was rebuttal testimony. If Respondent is referring to Exhibits 16 and 20 again, Respondent was granted a continuance with regard to the two exhibits and never requested a deposition.

Complainant's request for attorney's fees and costs

As set forth specifically in the various sections of this brief and Complainant's original post-hearing brief, many of the violations that are the subject of this action were repeated violations. The record in this proceeding clearly shows that the Respondent received notice of the violations and had an opportunity to correct the violations. In many instances it failed to do so. In some instances, it failed to do so for years. The ongoing violations were knowing and willful violations of the Act, pertinent regulations and applicable permit conditions.

Complainant hereby submits the affidavit of Jane E. McBride, in support of its request for attorney fees. Complainant seeks attorney fees at a rate of $150 per hour for the 154 hours devoted to the enforcement of this matter. The total amount requested is $24,100.00.

Conclusion

As stated in Complainant's original post-hearing brief, Complainant respectfully requests that the Board:

A. Find that the Respondent has violated the Act and the Board's regulations as set forth herein.

B. Order the Respondent to cease and desist from all violations of the Act and the Board's regulations, and specifically, consistent with the requirements of Permit No. 1999-209-SP, order Respondent to perform a trend analysis of groundwater sample results, submit a groundwater

assessment plan (to include an evaluation of its current monitoring plan and the appropriateness of G103 as an upgradient well) to the Illinois EPA for approval and initiate implementation of that plan within 30 days of approval by the Illinois EPA, and, if necessary, submit a corrective action/remediation plan to the Illinois EPA for approval and commence implementation of the corrective action plan within 30 days of approval by the Illinois EPA.

C. Order the Respondent to comply with its permit and all conditions contained therein, including the requirement to submit a biennial revision to its cost estimates. Order the Respondent to submit a biennial revision to its cost estimated within 60 days of the date of the Board's order.

D. Assess a civil penalty of $65,000 against the Respondent.

E. Award Complainant costs and reasonable attorney fees in the amount of $24,100.00.

F. Grant such other relief as the Board may deem appropriate.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,
ex rel. LISA MADIGAN, Attorney General
of the State of Illinois

MATTHEW J. DUNN, Chief
Environmental Enforcement Division

BY:
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Assistant Attorney General

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Springfield, Illinois 62706
(217) 782-9031

STATE OF ILLINOIS)
) SS
COUNTY OF SANGAMON)

AFFIDAVIT

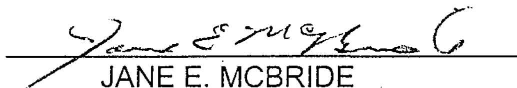
I, JANE MCBRIDE, after being duly sworn and upon oath, state as follows:

1. I am the Assistant Attorney General representing the Complainant in *People v. Jersey Sanitation Corporation,* Case No. PCB 97-2.

2. I have served as an Assistant Attorney General with the Illinois Attorney General's Office for over seven years. The customary value placed upon my services by the Illinois Attorney General's office and pursuant to *People v. ESG Watts, Inc.*, PCB 01-167 (April 1, 2004), slip op at 2, is $150.00 per hour.

3. I have expended well in excess of 154 hours of time on the case of *People v. Jersey Sanitation Corporation,* Case No. PCB 97-2. For purposes of recouping attorney's fees and costs, I attest that I have spent 154 hours on this matter.

Further, affiant sayeth not.



JANE E. MCBRIDE

Subscribed and sworn to before me
this 8th day of Nov., 2004.

NOTARY PUBLIC