



closure permit for its sanitary landfill. Jersey Sanitation appealed the permit, challenging several conditions of its 1999 post-closure permit. Jersey Sanitation Corp. v. IEPA, PCB 00-82, slip op. at 15 (June 21, 2001); *aff'd* IEPA v. Jersey Sanitation Corp., 271 Ill. Dec. 313, 784 N.E.2d 867 (4th Dist. 2003). The People amended the complaint on August 14, 2000, and again on January 8, 2001, to allege additional violations. On June 21, 2001, the Board granted Jersey Sanitation's motion for summary judgment in the permit appeal and directed the Agency to strike the contested conditions. In its final opinion and order, the Board found that Jersey Sanitation had demonstrated that, absent the conditions, the permit would not violate the Act or Board's regulations. *Id.*

On November 5, 2001, Jersey Sanitation filed a motion for summary judgment in this enforcement action. In its motion, Jersey Sanitation moved the Board to strike portions of two counts (counts IV(d) and IX) in the complaint relating to alleged violations of permit conditions that were struck by the Board in the related permit appeal. On April 4, 2002, the Board granted Jersey Sanitation's motion for summary judgment.

Hearing Officer Carol Webb (*nee* Sudman) held hearing on September 23 and 24, 2003. At the September hearing, five witnesses testified on behalf of the complainant: Mrs. Joyce Munie, Mr. Blake Harris, Mr. Rich Johnson, Mr. Charlie King, and Mrs. Karen Nelson. Two witnesses testified on behalf of Jersey Sanitation: Mrs. Pam Shourd and Mr. Andy Rathsack.

The hearing reconvened on October 17, 2003, to allow Jersey Sanitation to call its final witness. Counsel for Jersey Sanitation appeared at hearing with two new witnesses that had not been previously disclosed, Mr. Ken Liss and Mr. Bradley Hunsberger. The People requested the opportunity to depose the witnesses, and respondent did not object. The hearing was continued and reconvened again on January 13, 2004, where Mr. Liss, Mr. Hunsberger, and Mrs. Nelson, as a rebuttal witness, testified. After close of all the hearings, Hearing Officer Webb found all the witnesses credible.

On April 20, 2004, the People filed a post-hearing brief. Jersey Sanitation filed a post-hearing brief on October 22, 2004. The People replied on November 10, 2004.

## **SUMMARY OF COMPLAINT AND RELIEF REQUESTED**

Under the Act, the Attorney General may bring actions before the Board to enforce Illinois' environmental requirements on behalf of the People. *See* 415 ILCS 5/31 (2002); 35 Ill. Adm. Code 103. In this case, the People brought a nine-count against Jersey Sanitation for alleged violations at a sanitary landfill in Jerseyville, Jersey County. Each of the nine counts is summarized below, followed by a description of the People's requested relief.

### **Violations Alleged in Second Amended Complaint**

#### **Count I – Alleged Groundwater Violations**

In count I of the complaint, the People allege that Jersey Sanitation violated Sections 12(a) and (d) of the Act and Sections 620.115, 405, and 420(a) and (d) of the Board's regulations

by causing violations of Class II groundwater quality standards at the site. 2nd Am. Compl. at 1-9.

### **Count II – Alleged Failure to Monitor and Control Leachate**

In count II of the complaint the People allege that Jersey Sanitation violated Sections 12(a) and (d) and 21(o)(2) and (3) of the Act and Sections 807.313, 314(e), and 315 of the Board's solid waste rules for failing to install and maintain controls at the landfill so as to prevent and control leachate seeps and flows. 2nd Am. Compl. at 9-12.

### **Count III – Alleged Refuse in Water**

The People allege in count III of the complaint that Jersey Sanitation violated Sections 12(a) and (d) and 21(o)(1) of the Act by causing or allowing flowing waters and erosion streams at the site to contain refuse . 2nd Am. Compl. at 12-13.

### **Count IV – Alleged Permit Violations**

In count IV of the complaint, the People allege that Jersey Sanitation violated Section 21(d)(1) and (2) and 21(e) of the Act and Sections 745.181, 201, 807.301, 302, 315, and 524(a) of the Board's regulations for failing to fulfill several conditions of its supplemental permits. 2nd Am. Compl. at 14-28.

### **Count V – Alleged Failure to Provide Adequate Cover on Refuse**

In count V of the complaint, the People allege Jersey Sanitation violated Section 21(o)(5) of the Act and Section 807.305(a) of the Board's rules for failing to place a compacted layer of six inches of cover material on exposed refuse at the end of the operating day. 2nd Am. Compl. at 28-30.

### **Count VI – Alleged Financial Assurance Violations**

In count VI of the complaint, the People allege that Jersey Sanitation violated Sections 21(d) and 21.1(a) of the Act, Sections 807.302, 601, 603(b)(1), and 623 (1993) of the Board's financial assurance regulations, Section 807.302, and its supplemental permit for failing to provide updated financial assurance information and for failing to maintain financial assurance in accordance with then-current cost estimates. 2nd Am. Compl. at 30-33.

### **Count VII – Alleged Violations of Closure Requirements**

The People allege in count VII of the complaint that Jersey Sanitation violated Sections 21(d)(1), (2), (o)(6) and 22.17 of the Act and Sections 807.305(c), 318(b) and (c), and 502 (1993) of the Board's solid waste regulations for failing to: (1) install and maintain adequate final cover; (2) adequately abate gas problems; (3) file a detailed site description upon closure of the site; and (4) adequately control post-closure releases in order to prevent threats to human health or the environment. 2nd Am. Compl. at 33-37.

### **Count VIII – Alleged Open Burning of Landscape Waste at Jersey Sanitation**

The People allege in count VIII of the complaint that Jersey Sanitation violated Sections 9(a) and (c) and 21(o)(4) of the Act and Section 237.102(a) of the Board's regulations by open burning landscape waste not exempt from regulation on the site without a permit. 2nd Am. Compl. 37-40.

### **Count IX – Failure to Have a Chief Operator with Prior Conduct Certification**

In count IX of the complaint, the People allege that Jersey Sanitation violated Section 21(d)(2) of the Act and Sections 745.181 and 201 of the Board's regulations for failing to have a chief operator with prior certification at the facility. 2nd Am. Compl. at 40-42.

### **Relief Requested in Second Amended Complaint**

The People ask the Board to impose a civil penalty of \$65,000 against Jersey Sanitation, award the People \$24,100 in costs and attorney fees, and order Jersey Sanitation to perform a trend analysis of groundwater sample results, submit a groundwater assessment plan to the Agency for approval and implement the plan within 30 days of approval by the Agency. If the sampling and assessments demonstrate violations, then the People request that Jersey Sanitation submit a corrective action/remediation plan to the Agency for approval and implement the plan within 30 days of that approval.

The People also ask the Board to order Jersey Sanitation to cease and desist from all violations of the Act and Board regulations. Accordingly, the People also request that the Board order Jersey Sanitation to comply with its permit by submitting a biennial revision to its cost estimates within 60 days of the date of the Board's final disposition of this matter.

## **FACTS**

### **Overview of the Site and Witness Testimony**

Jersey Sanitation Corporation owns and controls the Jersey Sanitation Landfill (variously, site, landfill, or facility). AG Br. at 6; citing Tr. at 326-42. Jersey Sanitation Landfill is a 10-acre site located approximately two miles from Jerseyville in Jersey County. Parties Exh. 10. The Agency issued to the former owner of the site, Mr. Ralph Johnson, development and operating permits in 1974 (Development Permit Number 1973-044-DE and Operating Permit Number 1973-044-OP). Parties Exh. 1. Mr. Johnson opened the facility in 1975. Tr. at 331.

Mrs. Pam Shourd, President of Jersey Sanitation, testified regarding all matters concerning Jersey Sanitation Corporation including facts and circumstances bearing upon the penalty amount. In the late 1980's, neighbors living nearby the Jersey Sanitation landfill decided to purchase the landfill through a stock purchase from Mr. Johnson with the intention of cleaning up the site and closing it. Tr. at 341, 342, 346. Mrs. Shourd, stated that when the current shareholders met Agency Inspector Johnson in 1989, he advised them not to purchase the landfill

because the Agency intended to enforce against the owner, Mr. Ralph Johnson. Tr. at 344-45. Nevertheless, the current five shareholders acquired Jersey Sanitation Corporation and the landfill in November 1989. AG Br. at 6; citing Tr. at 346.

Mrs. Shourd testified that because Jersey Sanitation did not have enough funds to close the landfill immediately, the corporation operated the facility to generate enough income to shut it down. Jersey Br. at 3; citing Tr. at 346. Jersey Sanitation accepted waste at the landfill until September 17, 1992. Tr. at 346; Parties Exh. 42. Over the first two years that Jersey Sanitation owned the landfill, it acquired ten pieces of equipment to cover and compact trash, and to haul and compact dirt. The Agency certified closure of the facility on October 5, 1999, with issuance of supplemental permit No. 1999-209-SP. Parties Exh. 42. The permit indicates that post-closure care began September 30, 1994. *Id.*

Mr. Andy Rathsack, of Andrews Environmental Engineering, testified about the background and history of the Jersey Sanitation landfill, including its permitting history, surveys and boundary controls, and industry standards during the relevant time period of the closure and post-closure of the facility. Mr. Rathsack stated that new Part 807 landfill regulations became effective in 1990. At that time, facilities such as Jersey Sanitation could choose whether to close within two years under the old regulations, or remain open and be subject to the newer, more stringent Part 811 regulations. Jersey Sanitation chose to close within the two-year transition period. Mr. Rathsack stated he was involved in drafting Jersey Sanitation's 1999 application for certification of closure. Tr. at 390-91. The post-closure permit estimated groundwater monitoring costs at \$480 per year, but according to Mr. Rathsack, that estimate would not cover a statistical analysis. Tr. at 395-97; Parties Exh. 41, Attach. 5. Mr. Rathsack contends he quoted Jersey Sanitation an estimate of \$9,000 to do a more sophisticated groundwater assessment. Tr. at 395.

Mr. Ken Liss, the Springfield office director of Andrews Environmental Engineering, testified about sampling and analyzing groundwaters at the Jersey Sanitation site. Mr. Bradley Hunsberger also testified on behalf of Jersey Sanitation. Mr. Hunsberger is a professional geologist and director of hydrogeological services for Andrews Environmental Engineering. Mr. Hunsberger helped put together the permit application for RCS Landfill located approximately 500 feet south of the boundary of Jersey Sanitation Landfill. 2004 Tr. at 50.

On behalf of the People, Mrs. Joyce Munie, manager of the permit section for the Bureau of Land, related's 1999 post-closure permit requirements. Mr. Blake Harris, an accountant for the Agency, testified regarding financial assurance issues. Mr. Rich Johnson, Assistant Regional Manager, Bureau of Land for the Agency, testified regarding inspections, site history, permit background, alleged violations, and conversations with Jersey Sanitation employees and agents. Mr. Charlie King, environmental inspection specialist with the Agency's Bureau of Land, also testified regarding site inspections. Mrs. Karen Nelson, a geologist and Manager of Training and Certification Unit for the Bureau of Land, testified regarding groundwater issues.

At the January 2004 hearings, the Agency's Mrs. Nelson stated that she inspected the Jersey Sanitation site on May 16 through May 18, 1994. Tr. at 227. According to Mrs. Nelson, Jersey Sanitation Landfill was the first site she visited under a "groundwater enforcement

initiative” the Agency began in 1994. Tr. at 227-28. Mrs. Nelson’s groundwater sampling and analysis results showed exceedences of Class II groundwater quality standards in the downgradient wells for several parameters. Tr. at 249.

### **Site Permits**

The Agency granted Mr. Ralph Johnson a permit to develop the site, now the Jersey Sanitation Landfill, on August 6, 1973 (Permit No. 1973-44-DE). Parties Exh. 1. The Agency issued Mr. Johnson the operating permit on August 27, 1973 (Permit No. 1973-44-OP). *Id.* Jersey Sanitation obtained a supplemental permit (Permit No. 1989-177-SP) that modified the development and operating permit on November 17, 1989. Parties Exh. 6. The supplemental permit approves the groundwater monitoring well program.

The Agency granted Jersey Sanitation supplemental permits 1990-448-SP and 1990-459-SP on January 4, 1991. Permit 1990-448-SP changed the permitted operating hours of the facility, and 1990-459-SP revised the closure, post-closure care plan and cost estimates to increase the post-closure care period from 5 to 15 years. Parties Exh. 9. On February 8, 1993, the Agency granted Jersey Sanitation supplemental permit 1992-350-SP that modified the closure and post-closure care plan and cost estimates for the landfill and approved a groundwater monitoring plan. Parties Exh. 30. Jersey Sanitation was issued another supplemental permit, No. 1999-209-SP, on October 5, 1999, to acknowledge the receipt of certification of completion of closure, approve the revision of final contours, and approve the biennial revision of the closure and post closure care estimates. Parties Exh. 42.

### **Groundwater Monitoring Wells**

Jersey Sanitation Landfill has four groundwater monitoring wells onsite. Well MW-1 (G103)<sup>1</sup> is an upgradient well and MW-2 (G104), MW-3 (G105), and MW-4 (G106) are downgradient wells. Parties Exh. 28, section IV; Parties Exh. 39.

### **Agency Inspections**

The record shows that on only one occasion, June 14, 2001, did an Agency inspector investigate Jersey Sanitation Landfill and find no apparent violations. Parties Exh. 45.

### **Groundwater Monitoring**

On February 17, 1994, the Agency noted Jersey Sanitation had not yet provided the Agency with sampling procedures and detection monitoring methods required by its 1992 permit. Parties Exh. 31. On November 19, 1998, the Agency noted that Jersey Sanitation had not submitted a narrative demonstration that the revised groundwater monitoring program is adequate. Nor had Jersey Sanitation submitted sampling procedures and detection monitoring methods to the Agency as required by the permit. Parties Exh. 40. The Agency’s November 19, 1998 inspection report states G103 is not hydraulically upgradient of the site and is not

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<sup>1</sup> Illinois Environmental Protection Agency designations are in parentheses.

monitoring the same geologic zone as the downgradient wells. *Id.* Further, well G102, a well not included in Jersey Sanitation's approved monitoring plan, was not properly abandoned and plugged. *Id.* On June 6, 2000, an Agency inspector stated Jersey Sanitation must submit a groundwater evaluation including established background confidence limits to concentration levels of these parameters, a historical trend analysis of the data, groundwater flow maps over the last four consecutive monitoring quarters, and if necessary, an assessment monitoring plan in accordance with special condition 8(b) of Attachment A of Jersey Sanitation's 1992 permit. Parties Exh. 43. Groundwater monitoring violations were also observed on May 17, 2002. Parties Exh. 47.

### **Leachate Control**

During January 23, 1991 and May 21, 1991 inspections, Mr. Johnson saw leachate seeps, flows, and ponds on the north and west sides of the landfill. Parties Exh. 10 and 18. On January 23, 1991, Jersey Sanitation described seeing some liquid leaving a rusty-colored deposit and having a slight sulfur odor. Mr. Johnson determined the liquid was in contact with waste and was, therefore, leachate. At the May 21, 1991 inspection, Mr. Johnson saw black leachate seeps that became flows and pooled in areas on the north side of the site. Parties Exh. 18 at 5. A separate area of exposed refuse showed leachate seeps flowing into a pond that was brown and olive in appearance. Small frogs were nearby and jumped into the leachate ponds when Inspector Johnson approached. *Id.* Above-ground leachate seeps were also observed on November 19, 1991, February 25, 1992, February 17, 1994, and June 6, 2000. Parties Exh. 21, 25, 31, and 43.

Agency inspectors found leachate flow leaving the boundaries of the landfill and entering nearby Sandy Creek on four occasions: January 23, 1991, May 21, 1991, February 17, 1994, and June 6, 2000. Parties Exh. 10, 18, 31, and 43.

### **Erosion and Above Ground Water Control**

May 21, 1991 and November 19, 1998 inspection reports show that the landfill operation and filled areas were not adequately protected from runoff along the north boundary of the ravine. Parties Exh. 18 and 40. On February 17, 1994, Inspector King noted "hundreds of erosion crevices on the slopes of the filled areas." Parties Exh. 31. That same day, Mr. King saw "numerous runoff streams in the hundreds of crevices on the north side of the filled area." *Id.* On June 6, 2000, Mr. King observed ponded water in marsh-like conditions near the south center of the landfill. Parties Exh. 42.

### **Permit Requirements**

**Hours of Operation.** On August 30, 1990, Mr. Johnson concluded from conversations with landfill employees that Jersey Sanitation had been accepting refuse outside the permitted hours of operation. Parties Exh. 7 at 10.

**Elevation and Contour Limits.** Inspectors noted on several occasions that the elevation of the landfill appeared higher than indicated by the permitted site plans in both the ravine and

the lift in the central region. Elevation and contour violations were observed on: May 21, 1991, November 19, 1991, February 25, 1992, September 21, 1992, and January 21, 1994. Parties Exh. 18 at 3; Parties Exh. 21; 25; 27, and 31.

**Financial Assurance.** Inspection reports allege Jersey Sanitation also had neither submitted documentation of updated financial assurance nor revised cost estimates for closure and post-closure care in accordance with its supplemental permits. *See* Parties Exh. 18, at 4, Parties Exh. 21, 25, 31, 40, and 47.

**Uncovered Refuse.** Mr. Johnson, along with Agency inspector Charlie King, inspected the site again on November 19, 1991 saw bags of refuse on the bed of a small dump truck at the site. The site operator said the refuse was received the previous evening. Parties Exh. 21 at 4. Mr. Johnson noted bags of refuse again on February 25, 1992 and February 17, 1994. Parties Exh. 25 and 31.

**Well Maintenance.** On February 17, 1994, Mr. King's report noted that the cover of monitoring well G104 was unlocked and the monitoring well designations were not clearly identified. Parties Exh. 31. On November 19, 1998, well G106 was not properly marked. Parties Exh. 40.

### **Open Burning and Presence of Landscape Waste**

Agency inspectors first observed landscape waste, consisting of leaves and tree clippings, and the burning of landscape waste at the Jersey Sanitation landfill on August 30, 1990. Parties Exh. 7. On January 23, 1991, south of the equipment shed, Mr. Johnson observed piles of landscape waste, composed of tree and shrub trimmings and bags of leaves. Parties Exh. 10 at 3.

In response to the previous inspection when Mr. Johnson informed Mrs. Shourd of the need for a supplemental permit to conduct a composting operation, Mrs. Shourd wrote a letter to the Agency stating that the compost was not located within the landfill boundaries. In his report, Inspector Johnson stated that drawings of the landfill show the landscape waste is located within the landfill boundaries. He also told Mrs. Shourd that the landfill required a supplemental permit in order to conduct any composting operation. Parties Exh. 10 at 3.

Landscape waste was also observed on May 21, 1991 (Parties Exh. 18 at 2) and November 19, 1991 (Parties Exh. 21). Agency Inspector Johnson observed a single pile of landscape waste remaining on February 25, 1992, and was informed by the site's chief operator, Mr. Laird, that no new landscape waste had been accepted since the last inspection. Parties Exh. 25.

### **Status of Landfill Cover**

On many occasions, beginning with the August 30, 1990 inspection, Agency inspectors observed large areas of uncovered and inadequately covered refuse in the permitted landfill. Parties Exh. 7. On January 23, 1991, Inspector Johnson observed inadequate spreading and compacting of refuse, uncovered refuse, inadequate depth of daily cover, and failure to collect



and contain litter from the site at the end of the day. Parties Exh. 10. Mr. Johnson stated he saw a “large exposed face of refuse” covering an area about 413 feet long and varying from about 46 feet to 170 feet wide. *Id.* at 6. Inadequate cover was also recorded on May 21, 1991, November 19, 1991, February 25, 1992, and February 17, 1994. Parties Exh. 18 at 4; Parties Exh. 21 at 5; Parties Exh. 25; and 31.

No exposed refuse was observed on November 19, 1998. Parties Exh. 40. Then again at a June 6, 2000 inspection, the inspector observed cracks in the final cover. Parties Exh. 43.

### **Closure Requirements**

The purpose of the September 21, 1992 inspection was to determine whether Jersey Sanitation had discontinued disposal at the site and initiated closure at the end of business on September 18, 1992 as set forth in the site’s closure and post-closure plans. Parties Exh. 27. Mr. Conlon observed that the site appeared closed for business. In his report, Mr. Conlon noted, however, that onsite waste was deposited outside of landfill boundaries. The elevation of the waste still appeared above permitted landfill boundaries, although by the date of the inspection, Jersey Sanitation indicated it had applied for siting approval and intended to seek a permit for the extended elevations. *Id.*

The site, with the existing final contours, received siting approval from the Jersey County Board on March 8, 1999. Parties Exh. 41. Even after Jersey Sanitation received siting approval for the increases in elevation and contours, the site was again observed to be out of compliance with those limits at the May 17, 2002 inspection. Parties Exh. 47.

On several occasions, inspectors noted that Jersey Sanitation failed to take necessary action to abate gas problems or file a description of the site, both requirements of Jersey Sanitation’s closure plan. *See* Parties Exh. 31, 43.

### **Chief Operator**

After conversing with officers of the Jersey Sanitation landfill at a January 23, 1991 inspection, Mr. Johnson discovered that the previous operators with prior conduct certification were terminated or had quit, and a chief operator had not been officially named for the site. Parties Exh. 10. Mr. Johnson’s report stated that those actually operating the permit did not have prior conduct certification. Parties Exh. 10 at 7.

## **PRELIMINARY MATTERS**

### **Motion for Sanctions**

On September 9, 2004, the People moved for sanctions and requested that the Board close the record because Jersey Sanitation had not yet filed a post-hearing brief. The People asserted that the deadline for Jersey Sanitation to file its post-hearing brief was August 2, 2004, and Jersey Sanitation had not yet requested an extension nor filed a brief. The complainant claims it was prejudiced by the delay because it “will now be forced to re-familiarize itself, once

again, after the passage of the time, with the extensive record that exists in this matter, including all facts and arguments.”

Jersey Sanitation responded, after the expiration of the response time with permission from the hearing officer, on October 8, 2004. In response, Jersey Sanitation opposed the motion for sanctions raising all of the previous delays in this proceeding. Specifically, Jersey Sanitation noted that the People filed their 138-page post-hearing brief five weeks late. In addition to the extreme length of the People’s post-hearing brief, Jersey Sanitation contends that emergencies have arisen and other projects have interfered with the counsel for the respondent meeting the post-hearing deadline. Accordingly, Jersey Sanitation requested that the Board not impose sanctions and allow Jersey Sanitation until October 22, 2004, to file a brief. The hearing officer granted Jersey Sanitation until October 22, 2004, to file a post-hearing brief in a hearing officer order dated October 15, 2004.

The People moved for leave to reply, accompanied by a reply, on October 19, 2004. The complainant restated it was significantly prejudiced by Jersey Sanitation’s delay throughout this proceeding. The complainant disagrees that it was responsible for the delays cited by Jersey Sanitation in this proceeding stating “Complainant is not responsible for one hour, one minute, not even one second of Respondent’s delay.”

The Board’s procedural rules allow for sanctions for unreasonable failure to comply with procedural rules, board orders or hearing officer orders. 35 Ill. Adm. Code 101.800. In determining what sanction to impose, if any, the Board must consider factors such as the past history of the proceeding, the degree to which the proceeding has been delayed or prejudiced, and the existence or absence of bad faith on the part of the offending party. 35 Ill. Adm. Code 101.800(c). After considering these factors, the Board finds no sanctions are warranted. The People filed the complaint in this matter on July 8, 1996, and to date, both parties have caused delays in the proceeding. The Board finds that in this case, Jersey Sanitation did not ask for an extension in bad faith, and that a two-month delay is not prejudicial in a matter that has been ongoing for over eight years. The Board denies the People’s motion for sanctions.

### **Procedural Objections at Hearing**

#### **The People’s Objections**

**Objection to Continuance of Hearing.** At hearing, the People presented an assemblage of available groundwater sample results compiled by the People’s expert Mrs. Nelson. *See* Parties Exh. 16. Jersey Sanitation argued the information was new and asked that the hearing be continued at a later date allowing Jersey Sanitation time to review and respond to the information. The hearing officer continued the hearing and reconvened it on October 17, 2003. The People argue that none of the information was unfamiliar to Jersey Sanitation and, therefore, objects to the hearing being continued to October 17, 2003. AG Br. at 7-8.

**Objection to Late Disclosure of Witnesses.** Jersey Sanitation disclosed two new witnesses the day before the continued hearing began on October 17, 2004. At the beginning of the hearing on October 17, 2004, the People objected to the late disclosure. *See* Tr. at 219-20.

The hearing officer postponed the continuance to allow time for the People to depose the new witnesses. The People renew the objection in their closing brief. AG Br. at 9.

**Objection to Surrebuttal Testimony of Respondent's Witness.** Near the conclusion of hearing on January 13, 2004, the hearing officer allowed Jersey Sanitation to call Mr. Brad Hunsberger to provide a surrebuttal in response to rebuttal testimony presented by Mrs. Nelson. In support of its request for a surrebuttal, Jersey Sanitation argued that Mrs. Nelson's testimony contained new opinions and conclusions. AG Br. at 12. The People argue that as the party having the burden of proof, the complainant is allowed rebuttal testimony, not the respondent. *Id.* The People objected to Jersey Sanitation calling a surrebuttal witness at hearing and renew the motion in their closing brief. AG Br. at 11.

### **Jersey Sanitation's Response**

Jersey Sanitation contends that by maintaining the objections raised at hearing, the People are "elevating these matters into a sideshow, probably in order to deflect attention from weakness of Complainant's groundwater case." Jersey Br. at 18. Jersey Sanitation contends, in turn, that it was prejudiced by receiving the groundwater sample results (Parties Exhibit 16, drafted by Mrs. Nelson) four days before the beginning of the September 2003 hearings. *Id.* at 19. Rather than move to bar the document, Jersey Sanitation contends it sought more time to respond to the new information. *Id.* at 20.

Further, Jersey Sanitation contends that at the hearing in January 2004, Jersey Sanitation only sought to present surrebuttal because Mrs. Nelson raised a new opinion in her testimony. Specifically, Jersey Sanitation refers to Mrs. Nelson's opinion that the groundwater monitoring wells were improperly located in a sand seam. Jersey Br. at 21; citing 2004 Tr. at 84-85. Jersey Sanitation argues that the contested hearing officer's rulings contested were all proper.

### **Board Analysis**

The Board finds neither party was prejudiced by the contested hearing officer's rulings. The People had the opportunity to depose and cross-examine the witnesses presented by Jersey Sanitation. Accordingly, no material prejudice resulted from calling Mr. Liss and Mr. Hunsberger as witnesses. Further, the Board finds no prejudice resulted from Mr. Hunsberger's surrebuttal, as his brief surrebuttal responded directly to two opinions given by Mrs. Nelson. The Board affirms the hearing officer's rulings.

### **Previously Adjudicated Violations**

#### **Jersey Sanitation's Arguments**

Jersey Sanitation argues that the People cannot seek enforcement of violations in this proceeding alleged in inspection reports that were already used to prosecute prior administrative citations. Jersey Sanitation contends that as a matter of law the People cannot proceed both on the basis of administrative citation and straight enforcement. Jersey Br. at 9.

## **People's Arguments**

The People contend they are not seeking relief for the alleged violation of Section 21(o)(2), "leachate flows entering waters of the State," observed in the January 23, 1991 inspection report. *See* 415 ILCS 5/21(o)(2) (2002). The People assert that the Agency already pursued enforcement of that violation by administrative citation, docketed as AC 91-10. In the same administrative citation, the Agency inspector observed an alleged violation of uncovered refuse. The People note that Jersey Sanitation did not petition the Board for review. By default order, this Board assessed the statutory civil penalty.

As discussed above, Jersey Sanitation did not file a petition for review and paid the statutory penalty on April 29, 1991. The People claim they are not seeking relief for either allegation, rather they reference the violations as evidence that subsequent similar violations are ongoing and repeated.

The People argue there is nothing that prohibits them from enforcing the other violations of Section 21 cited in the January 23, 1991 inspection report that have not yet been adjudicated. Other observed violations in the report include: failure to comply with permit conditions, inadequate spreading and compacting of refuse, failure to collect and contain litter at the end of the operating day, causing water pollution, and inadequate measures to monitor and control leachate. In support of this argument, the People cite Section 31.1(a) of the Act, 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.

## **Board Discussion**

The Board finds that the Agency can properly pursue enforcement of any alleged violations observed in the 1991 inspection report that have not been included in any prior administrative citation. Administrative citations differ from Section 31 enforcement actions in several respects. Section 31.1(b) of the Act provides that an administrative citation must be filed within 60 days of an inspection. However, there is no time limit on filing a formal enforcement proceeding under Section 31. Statutory penalties for administrative citations are set in the Act, and the Board has no leeway to consider mitigating or aggravating factors in determining penalty amounts as it does in Section 31 actions. *See* 415 ILCS 5.42(b)(4-5) (2002). The administrative citation process is designed for prompt and efficient enforcement of "direct observation" of a limited group of violations specified in Section 31(a) of the Act. *See* IEPA v. Wright, AC 89-227, slip op. at 8 (Aug. 30, 1990). The formal enforcement process is designed to cover all provisions of the Act and Board rules and is lengthier and more legally complex. *Id.*

In the past, the Board has held that Section 31.1(a) prevents the use of both a formal enforcement action and the administrative citation process for the same violation. Tazewell County and IEPA v. Zimmerman and Waste Ltd., Inc., AC 90-40 (Dec. 20, 1990); citing IEPA v. Blackwell, AC 90-27 (Dec. 20, 1990). However, here, the People do not claim to enforce the

same provisions of the Act and Board regulations that have already been resolved by administrative citation. Accordingly, the Board finds that the People are not barred from enforcing alleged violations in an inspection report different than violations in the same report that have already been the subject of a prior administrative citation.

## **NO LONGER CONTESTED COUNTS**

### **Alleged Violations Struck by Board's Partial Summary Judgment Order**

As discussed above, the Board granted partial summary judgment in favor of Jersey Sanitation on April 4, 2002. Before discussing the alleged violations struck by summary judgment, below the Board sets forth the background for the Board's decision, which was based on the related permit appeal.

#### **Background**

In a related permit appeal, Jersey Sanitation appealed several conditions of its 1999 supplemental permit (No. 1999-209-SP). On June 1, 2001, the Board granted summary judgment in favor of Jersey Sanitation, finding that the contested conditions were unnecessary. Jersey Sanitation Corp. v. IEPA, PCB 00-82 (Jun. 21, 2001). Specifically, the Board directed the Agency to strike supplemental permit conditions A.4, B.6, C.1 through C.4, and C.8. Parties Exh. 44. Conditions B.6 and C.1 through C.4 all dealt with groundwater monitoring and analysis requirements. The Board found that Jersey Sanitation's own plan for monitoring was sufficient. Jersey, PCB 00-82, slip op. at 12-14. The Board found that those conditions were unnecessary to accomplish the purposes of the Act and the Board's regulations.

Condition A.4 of Jersey Sanitation's 1992 supplemental permit requires that the person responsible for post-closure care at a sanitary landfill have a valid prior conduct certification. Generally, a facility operating under Part 807 of the Board's rules must have a chief operator with a prior-conduct certification. The Board found that Jersey Sanitation had ceased day-to-day operations since the landfill had received a certificate of closure and was in post-closure care. Thus, Jersey Sanitation was not required to have a chief operator as defined by Part 745, and Condition A.4 was unnecessary. Jersey Sanitation Corp., PCB 00-82, slip op. at 7, 9.

The Agency appealed and the appellate court affirmed the Board's decision. IEPA v. Jersey Sanitation Corp., 336 Ill. App. 3d 582, 784 N.E.2d 867 (4th Dist. 2003).

### **Summary Judgment Granted in Favor of Jersey Sanitation Regarding Groundwater Monitoring and Analysis Issues and Chief Operator Certification**

In this enforcement proceeding, Jersey Sanitation moved the Board for partial summary judgment in its favor urging the Board to find that supplemental permit conditions A.4, and C.2 through C.4 are not, and never were, applicable. The Board granted Jersey Sanitation's motion for partial summary judgment, finding that "Jersey did not violate the stricken conditions A.4., C.2., C.3., and C.4. of its Supplemental Permit No. 1999-209-SP." People v. Jersey Sanitation Corp., PCB 97-2 (Apr. 4, 2002). The Board also granted Jersey Sanitation summary judgment

on the alleged violations of the Act and the Board's regulations related to the alleged permit violations: Sections 21(d)(1), 21(d)(2), 22.17(a) and 22.17(b) of the Act; and 35 Ill. Adm. Code 745.181 and 745.201. The stricken conditions and related alleged violations of the Act and Board's regulations are found in two counts (IV(D) and IX) of the second amended complaint. The People concede that the section of counts IV and count IX in its entirety are no longer at issue in this matter and did not address them in their closing briefs. AG Br. at 6-7.

### **Violations Jersey Sanitation Concedes it Committed**

In its post-hearing brief, Jersey Sanitation concedes several of the alleged violations. Jersey Sanitation admits that it committed the violations alleged in count II, count III, and the count IV allegations that Jersey Sanitation failed to maintain surface water ditches on the north and south sides of the landfill and kept the facility open outside the site's permitted hours of operation (special conditions 22 and 24 of Jersey Sanitation's 1989 supplemental permit). Jersey Sanitation also admits to count IV allegations that it failed to monitor and sample in accordance with the facility's groundwater monitoring program and failed to provide adequate final cover on the landfill (special conditions A.3, A.4, and B.6 of Jersey Sanitation's 1992 permit). Jersey Sanitation further concedes the daily cover and financial assurance violations in count V and VI. Below the Board summarizes and finds each of the conceded violations.

#### **Count II: Admitted Failure to Monitor and Control Leachate**

In count II of the complaint, the People allege that Jersey Sanitation failed to install and maintain controls at the landfill sufficient to prevent and control leachate seeps and flows. 2nd Am. Compl. at 9-12. Jersey Sanitation concedes that it failed to monitor and control leachate at the Jersey Sanitation Landfill, in violation of Section 807.314 of the Board's solid waste rules, as alleged in the complaint. 35 Ill. Adm. Code 807.314(e). In their post-hearing reply, the People note that Section I of the complaint alleges seven instances of violations, and that the violations alleging the discharge of leachate onto the surface of the landfill and into the waters of the State so as to cause water pollution were repeat violations. AG Reply at 6. The People further state that Section J alleges six instances of four violations each; therefore, five of the observations constitute repeat violations. *Id.* Because Jersey Sanitation concedes to the allegations and they are supported by the record, the Board finds that Jersey failed to control and monitor leachate at the site.

#### **Count III: Admitted Presence of Refuse in Flowing Water**

The People allege that refuse was present in flowing water at the Jersey Sanitation landfill during an inspection on February 17, 1994. Jersey Sanitation admits the alleged violations of Sections 12(a) and (d) and 21(o)(1) of the Act, and the Board finds the violations. 415 ILCS 5/12(a), (d), and 21(o)(1) (2002).

#### **Count IV: Admitted Violation of Permit Requirements**

In this count, the People allege violations of various special conditions of its 1989 and 1992 supplemental permits. 2nd Am. Compl. at 14-28. Jersey Sanitation concedes that it

violated a permit condition concerning the landfill's elevation and contours as alleged in the amended count IV. According to condition 3 of Jersey Sanitation's 1989 permit, there shall be no deviations from the approved plans and specifications. Engineers for Jersey Sanitation submitted the plans for elevation and contours to the Agency on July 18, 1989. Jersey Sanitation concedes that it failed to adequately maintain water ditches and violated permit conditions regarding the hours of operation (conditions 22 and 24 of Jersey Sanitation's 1989 supplemental permit). Jersey Sanitation also admits that it failed to monitor and sample in accordance with the facility's groundwater monitoring program and failed to provide adequate cover (conditions A.3, A.4, and B.6 of Jersey Sanitation's 1992 supplemental permit).

Section 807.301 of the Board's solid waste rules requires any operator of a sanitary landfill to comply with all applicable Board regulations (35 Ill. Adm. Code 807.301), and Section 807.302 requires compliance with all conditions and provisions of each permit (35 Ill. Adm. Code 807.302). Sections 21(d)(1) and (2) and 21(e) of the Act also require compliance with all permit conditions, the Act, and any applicable Board regulations. Here the Board finds that Jersey Sanitation violated the three conditions of its 1989 permit and three conditions of its 1992 permit as discussed above. As a result, the Board also finds Jersey Sanitation violated Sections 21(d)(1) and (2) and Section 21(e), and Sections 807.301 and 302 of the Board's regulations. 415 ILCS 5/21(d)(1), (2), 21(e) (2002); 35 Ill. Adm. Code 807.301, 807.302.

#### **Count V: Admitted Failure to Provide Adequate Cover**

Jersey Sanitation concedes the violations of Section 21(o)(5) of the Act and Section 807.305 of the Board's solid waste rules regarding cover alleged in count V. Jersey Br. at 8; 415 ILCS 5/21(o)(5) (2002); 35 Ill. Adm. Code 807.305. Count V alleges that Jersey Sanitation failed to place a compacted layer of six inches of cover on exposed refuse at the end of the operating day at four different inspections. AG Reply at 6. Accordingly, the Board finds the violations alleged in count V.

#### **Count VI: Admitted Failure to Meet Financial Assurance Requirements**

Jersey Sanitation concedes that it failed to meet financial assurance requirements as alleged in count VI. In count VI, the People allege violations of Section 21.1 of the Act and Section 807.601(a) and (b) of the Board regulations. 415 ILCS 5/21.1(a) (2002); 35 Ill. Adm. Code 807.601(a), (b). The People note that Jersey Sanitation concedes to violating various permit conditions, Sections 21(d) and 21.1(a) of the Act, and Section 807.601 of the Board's regulations for a total of 2,093 days by failing to maintain financial assurance in an amount equal to its current cost estimate for closure and post-closure. In Jersey Sanitation's 1992-350-SP permit, condition B.3 requires that financial assurance be fully funded. Condition 6.4 requires that the landfill provide documentation of its financial assurance funding within 90 days of the date of the permit. Condition 6.5 required Jersey Sanitation to submit biennial cost estimates for closure and post-closure care by March 16, 1993. Jersey Sanitation did not submit a biennial cost estimate until October 5, 1999, when it was approved and included in its 1999 supplemental permit. Jersey Sanitation has not submitted a revised cost estimate since that date. AG Reply at 7. Here, the Board finds the violations alleged in count VI.

### **DISCUSSION**

After the Board's April 4, 2002 granting of summary judgment in favor of Jersey Sanitation and the Board's findings on the violations that Jersey Sanitation admits in its post-hearing brief, the Board will analyze and make a determination on each of the remaining contested counts below. The violations remaining are those found in count I, count IV, count VII, and count VIII.

### **Burden of Proof**

Section 31(e) states the burden of proof applicable to enforcement proceedings before the Board:

In hearings before the Board under this Title the burden shall be on the Agency or other complainant to show either that the respondent has caused or threatened to cause air or water pollution or that the respondent has violated or threatens to violate any provision of this Act or rule or regulation of the Board or permit or term or condition thereof. 415 ILCS 5/31(e) (2002).

In order to prevail in an enforcement case before the Board, the complainant must prove by a preponderance of the evidence that the respondents have committed the violations alleged in the complaint. Village of South Elgin v. Waste Management of Illinois, Inc., PCB 03-106 (Feb. 20, 2003); citing People v. Fosnock, PCB 41-1, slip op. at 19 (Sept. 15, 1994). A proposition is proved by a preponderance of the evidence when it is more probably true than not. Village of South Elgin, slip op at 19; citing Nelson v. Kane County Forest Preserve, PCB 94-244 (July 18, 1996).

### **Count I: Alleged Groundwater Quality Violations – Arsenic, Iron, TDS, and Lead**

#### **Applicable Law**

Sections 12(a) and (d) provide in part:

No person shall:

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

Section 807.313 of the Board's solid waste regulations prohibits causing, threatening, or allowing water pollution at a sanitary landfill. 35 Ill. Adm. Code 807.313. Section 807.315 requires any person applying to operate a sanitary landfill must prove to



the Agency that no damage or hazard will result to the waters of the State because of the development and operation of the landfill. 35 Ill. Adm. Code 807.315.

Section 620.115 of the Board’s regulations requires compliance with all applicable groundwater regulations (35 Ill. Adm. Code 620.115), and Section 620.405 prohibits the violation of specific groundwater quality standards (35 Ill. Adm. Code 620.405).

Section 620.420 of the Board’s regulations sets forth the specific Class II groundwater quality standards:

a) Inorganic Chemical Constituents

- 1) Except due to natural causes or as provided in Section 620.450 or subsection (a)(3) or (d) of this Section, concentrations of the following chemical constituents must not be exceeded in Class II groundwater:

Constituent	Standard (mg/L)
Arsenic	0.2

- 2) Except as provided in Section 620.450 or subsection (a)(3) or (d) of this Section, concentrations of the following chemical constituents must not be exceeded in Class II groundwater:

Constituent	Standard (mg/L)
Iron	5.0
Total Dissolved Solids (TDS)	1,200.0
Sulfate	400.0

\* \* \*

- d) pH  
Except due to natural causes, a pH range of 6.5 - 9.0 units must not be exceeded in Class II groundwater that is within 5 feet of the land surface.

**People’s Arguments**

The People assert that samples collected at the site demonstrate that Jersey Sanitation caused violations of the Board’s groundwater quality standards. To establish proof of causation that Jersey Sanitation has contaminated the underlying groundwater, the People state that samples taken in upgradient wells show no exceedences of the Class II groundwater standards while results from downgradient wells do. AG Br. at 13; citing Parties Exh. 34; Tr. at 300-02. The People further contend that the level of exceedence has increased over time, and other

contaminants found by the sampling results, for example, organics, are those commonly found in landfill waste. *Id.*; citing Parties Exh. 34; Tr. at 256.

Specifically, the People allege violations of Class II groundwater standards for arsenic, iron, total dissolved solids, and sulfate. AG Br. at 14. The People contend the arsenic and iron violations were documented in 2000 at the G104 well. Also at well G104, tests have shown exceedences of dissolved sulfate concentrations since 1990. AG Br. at 14. Dissolved chloride concentrations at G104 exceeded groundwater standards at the 2003 sampling. AG Br. at 14; Compl. Exh. 16, 20. At hearing, Mrs. Nelson testified that the exceedences are increasing in magnitude, and concentrations of iron detected at well G105 are at a concentration level higher than she has ever seen at a landfill. AG Br. at 15.

The People contend that evidence admitted at hearing and contained in the record demonstrates that Jersey Sanitation had information that indicated it should implement controls and practices to address leachate, drainage and gas. The People further assert Jersey Sanitation failed to install and maintain those controls, and as a result, allowed leachate accumulations, gas releases and drainage problems to occur at the landfill and continue to cause, threaten or allow water pollution. AG Br. at 27.

Next the People argue that geologists for both parties, Mrs. Nelson and Mr. Hunsberger, agree that because sample results showed no exceedences of the standards at well G103 or G102, upgradient wells, background levels do not exceed the Class II standards for the purposes of the monitoring program. AG Br. at 16; citing Tr. at 301, and Jan. 13, 2004, Tr. at 99-100.

An expert for the People explained that at landfills, there are two ways that contaminants can enter the environment: through leachate or gas. AG Br. at 16. The People state the record contains evidence that both gases and leachate have accumulated at the landfill causing seeps and detectable odorous releases at a total of five inspections: Jan. 23, 1991; May 21, 1991; Nov. 19, 1991; Feb. 25, 1992; and Jan. 21 and Feb. 17, 2004. AG Br. at 17. Both inspectors Johnson and King observed such releases. *Id.* Further, Mrs. Nelson observed leachate seeps and flows on several occasions in May 1994 when she performed a groundwater analysis at the site. AG Br. at 18.

The People also cite three occasions where Agency inspectors observed leachate seeps flowing into Sandy Creek, an off-site creek to the west of the landfill. AG Br. at 27.

The People further cite to Illinois caselaw in support of their groundwater claims. People v. ESG Watts, Inc., PCB 96-107 (Feb. 5, 1998) (ESG Watts I). The People note that in ESG Watts I, monitoring results showed exceedences of Class II standards for sulfate, iron and manganese standards. The monitoring results demonstrated that the concentrations of those contaminants were significantly higher in the downgradient wells. The People argued that contamination found in the wells was a result of releases from the landfill. AG Br. at 29. ESG Watts argued that all three contaminants were naturally occurring and that even concentrations of iron upgradient exceeded regulatory limits. The Board concluded that groundwater monitoring data showed that the landfill caused the exceedences of the Board's groundwater quality standards. AG Br. at 29; citing ESG Watts I, slip op. at 34. In ESG Watts, the People alleged

violations of Class I groundwater standards, but not of Class II standards. The Board held that the People failed to prove Class I violations and did not allege violations of Class II standards. The Board did, however, find violations of the general nondegradation provisions and general groundwater quality standards.

For further support, the People cite to another case involving ESG Watts. People v. ESG Watts, PCB 96-233 (Feb. 5, 1998) (ESG Watts II). The People claim that in ESG Watts II, the Board held that ESG Watts operated its landfill in a manner that constituted a threat to the waters of the State. The People contend the Board made this finding because ESG Watts failed to install monitoring equipment, monitor groundwater beneath the landfill and submit monitoring reports. The Board refused to find that the landfill actually caused the exceedences of organic contaminants in the monitoring results because the results showed exceedences in upgradient as well as downgradient wells.

Consistent with the decision in ESG Watts I, the People contend the exceedences of groundwater quality standards in turn constitute violations of Section 12(a) and Section 620.115 and 620.405 of the Board's regulations. The People assert that the alleged groundwater contamination has impaired resource groundwater in violation of Section 620.301 of the Board's groundwater quality standards. AG Br. at 38. The People also assert that by causing or allowing the contamination, as alleged, Jersey Sanitation created a water pollution hazard in violation of Section 12(d). AG Br. at 38-39. In alleging each of the violations, the People emphasize that Jersey Sanitation knew of the need to control and maintain the landfill in order to avoid polluting the environment and either failed to install controls or did not properly maintain them. AG Br. at 39.

The People further state that Jersey Sanitation's 1992 permit required an evaluation of the groundwater flow direction and the hydraulic gradients at the facility, an evaluation Jersey Sanitation never performed. AG Br. at 44; citing Parties Exh. 30.

The People argue that Jersey Sanitation's permit requires Jersey Sanitation to perform a trend analysis and development of a groundwater assessment plan that will evaluate the appropriateness of G103 as an upgradient well. AG Br. at 52. Both Mrs. Nelson's 1994 groundwater monitoring assessment and a November 19, 1998 Agency inspection report opined that well G103 is not an upgradient well. For example, Mrs. Nelson's report stated "it appears that G103 is not hydraulically upgradient of, and unaffected by the site and is not monitoring the same geologic zone as the downgradient wells." AG Br. at 44; citing Parties Exh. 34. Similarly, the inspection report stated that "Monitoring Well G103 is not hydraulically upgradient of, and unaffected by the site and is not monitoring the same geologic zone as the down gradient wells." AG Br. at 46; citing Parties Exh. 40.

Mrs. Nelson believes that well G102, a well on the site, screened at a shallower depth, but not part of Jersey Sanitation's approved groundwater monitoring plan, is a more appropriate upgradient well. AG Br. at 52-53. Mrs. Nelson testified that samples from G102 showed no exceedences of groundwater standards, but G103, while showing no exceedences of Class II standards, did show exceedences of Class I standards. AG Br. at 57; citing Tr. at 257-58.

Mr. Hunsberger, on the other hand, opined at hearing that G103 is an appropriate upgradient well because he believes a continuous permeable zone runs from that well uphill to Sandy Creek. AG Br. at 59. In response, Mrs. Nelson distinguished her view of the geology of the site. Mrs. Nelson states that the material present at G103 is different than that at the other wells. Mrs. Nelson claims she could find no evidence that the zone monitored by G103 is connected to the other wells, and concluded that G103 is isolated. AG Br. at 59-60.

Consistent with the decision in ESG Watts I, the People contend the exceedences of groundwater quality standards in turn constitute a violation of Section 12(a) and Section 620.115 and 620.405. The People assert that the alleged groundwater contamination has impaired resource groundwater in violation of Section 620.301 of the Board's groundwater quality standards. AG Br. at 38. The People also assert that by causing or allowing contamination, as alleged, Jersey Sanitation caused a water pollution hazard in violation of Section 12(d). AG Br. at 38-39. In alleging each of these violations, the People emphasize that Jersey Sanitation knew of the need to control and maintain the landfill in order to avoid polluting the environment and failed to install controls or did not properly maintain them. AG Br. at 39. The People conclude that Jersey Sanitation has violated five groundwater provisions for over 12 years. AG Br. at 69.

### **Jersey Sanitation's Arguments**

According to Jersey Sanitation, nothing in the record proves that Jersey Sanitation caused the exceedences. Jersey Sanitation argues that ESG Watts I is distinguishable from the facts at hand because, unlike in ESG Watts I, here the Agency's witnesses "could not and do not establish that Jersey Sanitation was the source." Jersey Br. at 12. Further, Jersey Sanitation contends that the People have not met their burden of proof that the contamination must be from Jersey Sanitation where their own witnesses acknowledge that such an inference does not exist. Jersey Sanitation asserts that even the People's witness, Mrs. Nelson, admitted that the iron levels at issue could possibly have resulted from a source other than Jersey Sanitation Landfill. Jersey Br. at 12; citing Tr. at 305-06. Jersey Sanitation further states that Mr. Liss opined there appears to be no public health danger at the facility (Jersey Br. at 12; citing Tr. at 28-29) and that Mrs. Munie, head of the Agency's Bureau of Land Permit section, also acknowledged that she did not have sufficient information to conclude that any constituent levels coming from Jersey Sanitation's groundwater monitoring system were a result of Jersey Sanitation's activities. Jersey Br. at 12; citing Tr. at 43, 45-46.

Next Jersey Sanitation argues that even if the Board concludes that Jersey Sanitation is causing the alleged groundwater violations, its own permit application defines the next step of investigation, which is not the groundwater evaluation protocol proposed by the Agency. Jersey Br. at 14. Without arguing *res judicata*, Jersey Sanitation contends that the People's primary issue in this action concerns the groundwater monitoring program at Jersey Sanitation; a program which, Jersey Sanitation contends, both the Board and appellate court found was sufficient for compliance with Section 12 of the Act and Part 807 of the Board's regulations. Jersey Br. at 10. Jersey Sanitation argues that rather than considering whether constituent levels trigger further analysis of groundwater, the proper consideration should be whether a trend is developing. Jersey Br. at 14. If a trend is determined, Jersey Sanitation asserts only then it must perform additional sampling and retain a professional engineering firm. Jersey Br. at 15.

### **People's Reply**

In response, the People contend that the trend analysis and potential groundwater assessment they recommend in light of the exceedences of groundwater standards at the site are standard practice. In support of this argument, the People contend that experts for both sides recommend that Jersey Sanitation implement these practices at the landfill, and that Jersey Sanitation's permit calls for such implementation. AG Br. at 9.

Next, the People contend that whether the G103 monitoring well is an appropriate upgradient well is a long-unanswered question. The People contend that it is not at all surprising that the geologists and engineers made recommendations similar to the conditions that existed in Jersey Sanitation's permit, because they are practices that geologists and engineers customarily use to address groundwater issues such as those that the People allege exist at the Jersey Sanitation site. AG Br. at 10. The People contend they are merely asking the Board find that the groundwater at the Jersey Sanitation site is exceeding standards, and, consequently, to issue an order requiring Jersey Sanitation to comply with its permit by adhering to the language in its permit that requires it to perform a trend analysis and then, based on those results, retain a professional engineering firm to consider the next step. AG Br. at 11.

The People contend the record supports a finding of Section 12(a) and (d) violations, as well as violations of Sections 807.313 and 315. AG Br. at 12, 13. The People further state the exceedences have increased in magnitude over the years, but Jersey Sanitation has not performed a single assessment of the groundwater at the site. AG Br. at 13.

### **Board Analysis Finding Violations as Alleged**

Part 807 requires landfill operators to prove that they do not and will not affect the waters of the State. 35 Ill. Adm. Code 807.313 and 807.315. Further, Jersey Sanitation's permit provides:

Groundwater monitoring results will be evaluated each quarter against background data, General Use Water Quality Standards, and other historic water analysis information. If a trend is believed to be developing, more frequent sampling (e.g. monthly) may be performed to substantiate or dismiss the likelihood of a site impact. A professional engineering firm should be retained to develop future actions and/or plans for subsequent IEPA approval. Parties Exh. 41, Att. 5, at 4.

Jersey Sanitation's groundwater monitoring results actually showed exceedences of Class II standards. Regardless of whether "a trend is believed to be developing," Jersey Sanitation is under an obligation to retain a professional engineering firm to develop future actions or plans for Agency approval. By failing to retain a professional engineering firm to develop future actions and/or plans for Agency approval, the Board finds that Jersey Sanitation operated its landfill in a manner that constitutes a threat to waters of the State. Jersey Sanitation therefore

violated Sections 12(a) and (d) of the Act and Sections 807.313 and 807.315 of the Board's regulations.

The People's experts state that Jersey Sanitation Landfill is the cause of the contamination found on site because downgradient wells show exceedences while upgradient well show none. Experts for the People question whether well G103 is a proper upgradient well. Mrs. Nelson, for example, believes that another well on site, G102, is a more appropriate upgradient well. Mrs. Nelson's sampling results from G102 also showed no groundwater quality exceedences.

Jersey Sanitation's experts maintain that G103 is a proper upgradient well, but assert that the Agency cannot prove that Jersey Sanitation is the source of the contamination.

In summary, the Board finds that the Agency has shown by a preponderance of the evidence that the Jersey Sanitation landfill caused the inorganic exceedences. Groundwater sampling results from the site have shown violations of various Class II groundwater quality standards for over 12 years. Sampling results from the well that Jersey Sanitation's experts maintain is hydrogeologically upgradient show no exceedences of Class II standards, while the downgradient wells on site do. Jersey Sanitation has provided the Board with no evidence that the landfill is not the source or that the contamination is coming from some other source. Accordingly, the Board finds the alleged violations of Section 620.420, the Class II groundwater quality standards. Accordingly, the Board also finds Jersey Sanitation violated Section 620.405, which prohibits contaminating the groundwater so as to violate a specific groundwater quality standard.

#### **Count IV: Alleged Violations of Permit Requirements**

##### **Applicable Law**

Sections 21(d)(1) and (2) and 21(e) provide:

No person shall:

- (d) Conduct any waste storage, waste-treatment, or waste-disposal operation:
  - (1) without a permit granted by the Agency or in violation of any conditions imposed by such permit . . .
  - (2) in violation of any regulations or standards adopted by the Board under this Act.
- \*\*\*
- (e) Dispose, treat, store or abandon any waste, or transport any waste into this State for disposal, treatment, storage or abandonment, except at a site or facility which meets the requirements of this Act and of regulations and standards thereunder.

Section 807.301 of the solid waste regulations requires compliance with the Part 807 regulations when operating a sanitary landfill (35 Ill. Adm. Code 807.301), and Section 807.302 of the Board's solid waste rules requires compliance with all conditions and provisions of each permit (35 Ill. Adm. Code 807.302).

Section 807.524(a) of the Board's solid waste regulations requires the operator of a waste disposal site to implement the post-closure care plan once it receives a certification of closure pursuant to Section 807.508. 35 Ill. Adm. Code 807.524(a).

### **Jersey Sanitation's Arguments**

As discussed above, Jersey Sanitation concedes that it in fact violated several permit requirements. Jersey Sanitation concedes that it violated its permit condition limiting the landfill's elevation and contours as alleged in count IV of the second amended complaint. Further, Jersey Sanitation concedes that it violated a permit condition requiring maintenance of surface water ditches on the north and south sides of the landfill as well as hours of operating as required by the permit.

However, according to Jersey Sanitation, the People cannot enforce permit conditions that were struck from Jersey Sanitation's 1999 supplemental permit in the related permit appeal, PCB 00-82. Jersey Sanitation argues it is not bound by the permit conditions that the Board found were unnecessary and struck from its 1999 permit. Jersey Br. at 6. Jersey Sanitation does not specifically list the permit conditions, but references the Board's June 21, 2001 order in the related permit appeal striking permit conditions: A.4, B.6, C.1 through C.4, and C.8. Jersey Br. at 6; citing Parties Exh. 44.

Further, Jersey Sanitation disputes allegations that it failed to conform its monitoring wells as required by its permit; failed to provide a narrative analysis of the effectiveness of its groundwater monitoring program; and failed to obtain a permit to conduct landscape waste operations. Mrs. Shourd contends the composting was done only on farm property and not on landfill property. Jersey Br. at 8.

### **People's Arguments**

In the remaining allegations of count IV, the People contend that by violating various conditions and provisions of the landfill's permits, Jersey Sanitation violated the general prohibitions contained in Sections 807.301 and 807.302. The People respond that Jersey Sanitation's repeated reference to "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." AG Reply at 35.

**Failure to Plug Well MW5.** First, the People contend, Jersey Sanitation has not modified its groundwater monitoring wells according to the approved monitoring plan. AG Br. at 14. The People assert that Jersey Sanitation has failed to plug well MW5. Further, contend the People, well MW5 is not in the current monitoring plan and Jersey Sanitation has failed to

apply for a supplemental permit to modify the program in order to maintain the MW5 well. The People allege Jersey Sanitation is in violation of special condition 13 of Jersey Sanitation's 1989 permit, which in turn constitutes violations of Sections 21(d)(1) and (2) and Section 21(e), and Sections 807.301 and 302 of the Board's regulations. AG Reply at 15. The People state this particular violation has continued for over 13 years. *Id.*

**Failure to Submit Narrative Groundwater Report.** Second, the People allege that Jersey Sanitation violated special condition 11(b) of its 1989 permit for approximately two years. The People contend that Jersey Sanitation violated this condition by failing to submit a narrative report analyzing the effectiveness of its groundwater monitoring program. AG Reply at 15. The People claim this violation lasted 665 days. AG Reply at 16.

**Landscape Waste Operations on Landfill Property.** The People allege Jersey Sanitation violated Section 21(d)(1) of the Act by accepting landscape waste at the landfill site. AG Br. at 95. The People contend that during the August 30, 1990 inspection, the Agency inspector observed accumulations of landscape waste. According to the People, the effective permit at the time of the inspection did not allow compost operations. The Agency inspector observed landscape waste at the site on two more occasions: at January 23, 1991 and May 21, 1991 inspections. The People state that regardless of whether the landscape waste was within the boundaries of the permitted landfill or outside the boundaries yet still on the property, Jersey Sanitation was conducting an unpermitted activity. The People claim that if the observed landscape waste was within the boundaries, it was a compost operation not permitted under the then applicable permit. On the other hand, asserts the People, if the observed waste was outside of the boundaries, it was a compost operation for which Jersey Sanitation should have obtained a supplemental permit and did not. Either way, argue the People, Jersey Sanitation violated Section 21(d)(1) by conducting an unpermitted waste disposal operation.

The People contest Jersey Sanitation's argument that the landscape waste on its property was not located within the boundaries of the landfill. In response to Mrs. Shourd's allegations that landscape waste was instead collected on adjacent farm property, the People contend that upon receipt of those claims and re-inspection, inspector Johnson determined that the landscape was in fact partially within the landfill boundaries. AG Resp. at 16. The People contend that Agency inspectors observed landscape waste on the landfill site in August 1990, January 1991, and again in May of 1991, over a period of ten months. AG Br. at 16-17. On each occasion, claim the People, Jersey Sanitation was told it had to have a supplemental permit in order to accept and maintain waste for composting. AG Br. at 17. The People state the first violation was observed on August 30, 1990, and last observed on May 21, 1991, for a total of 263 days.

**Failure to Lock Well G104.** Fourth, the People claim that Jersey Sanitation did not dispute the allegation that Jersey Sanitation violated its 1992 permit by failing to lock monitoring well G104 during the February 17, 1994 inspection. AG Reply at 18. Because Jersey Sanitation failed to contest, argue the People, the Board should find that Jersey Sanitation failed to comply with Item 10 of Attachment A to its 1992 permit. *Id.*

**Continuing Violations of Groundwater Quality Standards.** Fifth, the People also allege that Jersey Sanitation did not dispute the alleged violation of continuing exceedences of



groundwater standards at the landfill. The People allege that Jersey Sanitation violated special conditions 5(a), 6(b), 8, 16, 20, 21, and 22 of its 1992 permit and that those exceedences have been detected in sample results from the landfill since 1991. AG Reply at 19.

**Failure to Take Corrective Action.** In the sixth permit violation allegation, the People contend Jersey Sanitation violated special condition C.5 of its 1999 permit. The People allege that during the June 6, 2000 inspection, Mr. King observed ponded and standing water, gas releases and gas odors, crevices and rills, dead and stressed vegetation and a leachate pop-out. Condition C.5 requires Jersey Sanitation to take corrective action if various problems such as those described above occur during the post-closure care period. *See* Parties Exh. 42, at 4. Again, the People note that Jersey Sanitation did not dispute these allegations in its post-hearing brief and that they constitute violations of Sections 21(d)(1) and (2) and Section 22.17 of the Act as well as Section 807.524(a) of the Board's regulations. AG Reply at 19.

### **Board Analysis Finding Violations as Alleged**

The only one of the remaining six permit violations that Jersey Sanitation contests is the allegation that Jersey Sanitation conducted landscape waste operations on the permitted landfill property. Mrs. Shourd, on behalf of Jersey Sanitation, does not dispute that it accepted and composted landscape waste, but argues that the composting was conducted outside the permitted boundaries of the landfill. Jersey Br. at 9. Mrs. Shourd does not offer any evidence in support. Agency Inspector Johnson determined the composting was conducted on the permitted landfill site by re-inspecting the site and reviewing documented drawings concerning the facility's permitted boundaries. Mr. Johnson determined from his research that the landscape waste was stockpiled partially within the landfill boundaries. The Board finds the evidence in the record shows that Jersey Sanitation violated section 21(d)(1) by conducting landscape waste operations without a permit.

Although Jersey Sanitation does not concede the remaining violations, Jersey Sanitation also does not contest the People's allegations. In addition to the count IV violations found above, the Board finds that Jersey Sanitation also violated the following permit conditions: (1) special condition 13 of Jersey Sanitation's 1989 permit; (2) special condition 11(b) of its 1989 permit; (3) Section 21(d)(1) by conducting an unpermitted waste disposal operation; (4) Item 10 of Attachment A to its 1992 permit; (5) special conditions 5(a), 6(b), 8, 16, 20, 21, and 22 of its 1992 permit; and (6) special condition C.5 of its 1999 permit. Accordingly, the Board also finds that each permit violation in turn constitutes a violation of Sections 21(d)(1) and (2) and Section 22.17 of the Act as well as Section 807.524(a) of the Board's regulations.

### **Count VII: Alleged Failure to Timely Complete Closure and Comply With Closure Requirements**

#### **Applicable Law**

Section 21(o)(6) of the Act provides:

- (o) Conduct a sanitary landfill operation which is required to have a permit under subsection (d) of this Section, in a manner which results in any of the following conditions:
  - (6) failure to provide final cover within time limits established by Board regulations;

Section 22.17 of the Act regarding post-closure care of sanitary landfills requires the owner and operator of a sanitary landfill to monitor gas, water and settling at the completed site. 415 ILCS 5/22.17(a) (2002). Pursuant to subsection (b) of Section 22.17, a landfill owner or operator must take whatever remedial action is necessary to abate any gas, water or settling problems which appear during such period of time specified in subsection (a) . . . . 415 ILCS 5/22.17(b) (2002).

Section 807.305(c) of the Board's solid waste regulations regarding landfill cover provides:

Unless otherwise specifically provided by permit, the following cover requirements shall be followed:

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- c) Final Cover - a compacted layer of not less than two feet of suitable material shall be placed over the entire surface of each portion of the final lift not later than 60 days following the placement of refuse in the final lift, unless a different schedule has been authorized in the Operating Permit.

Section 807.318(b) of the Board's regulations regarding landfill closure require the owner or operator to take whatever remedial action is necessary to abate any gas, water or settling problems which that occur during the closure period. Upon closure, Section 807.318(c) requires the owner or operator to file a detailed description of the site, including a plat, with the appropriate county land recording authority for the county in which the site is located. 35 Ill. Adm. Code 807.318(b), (c).

Section 807.502 of the Board's landfill closure regulations requires the site operator to close the site in a manner that "[m]inimizes the need for further maintenance," and "[c]ontrols, minimizes or eliminates post-closure release of waste, waste constituents, leachate, contaminated rainfall, or waste decomposition products to the groundwater or surface waters or to the atmosphere to the extent necessary to prevent threats to human health or the environment." 35 Ill. Adm. Code 807.502.

### **People's Arguments**

In count VII, the People allege several violations of closure requirements. AG Br. at 114. First, the People state that Jersey Sanitation did not submit final compaction test results as required by both the 1992 supplemental permit and the Board's solid waste regulations in violation of Section 807.508. Second, the People assert that Jersey Sanitation failed to timely

file a plat of the landfill with the Jersey County Recorder of Deeds as required by Section 807.318(c). AG Br. at 118. This violation was first noted during a February 17, 1994 inspection and lasted until January 31, 1997.

Third, according to the People, Jersey Sanitation failed to establish and maintain final cover at the landfill 60 days after ceasing to accept waste in violation of Sections 21(d)(1) and (2) and 21(o)(6) of the Act and Section 807.305(c) of the Board's regulations. The People state that these violations first occurred, as documented in inspection reports, on December 1, 1992, and lasted until October 5, 1999, for a total of 2,497 days. Fourth, the People allege that Jersey Sanitation failed to take remedial action to abate gas after it stopped accepting waste in violation of Section 807.318(b). Detections of the releases were first documented on November 18, 1998, and lasted until June 6, 2000. Fifth, the People allege that Jersey Sanitation failed to close the landfill in a way that adequately controlled post-closure releases to groundwater, surface water, and the atmosphere in violation of Section 807.502. These violations continued from September 18, 1992 until October 5, 1999. AG Br. at 119.

### **Jersey Sanitation's Arguments**

In response, Jersey Sanitation contends that a letter issued by the Agency in 1999 certifying closure officially certified that the landfill had been closed in accordance with all permit, regulatory, and statutory requirements as of September 30, 1994. Jersey Br. at 5; citing Bradd v. IEPA, PCB 90-173 (May 9, 1991); *see also* 35 Ill. Adm. Code 807.508. Accordingly, the violations related to the conditions struck by the Board are not enforceable. Jersey Br. at 6.

### **People's Reply**

In reply, the People assert that Jersey Sanitation has not disputed these allegations at hearing nor in its post-hearing brief. AG Reply at 20. First the People allege that Jersey Sanitation violated Section 807.318(c) by failing to timely file a plat with the county recorder. Second, the People assert Jersey Sanitation failed to establish and maintain final cover at the landfill 60 days after ceasing to accept waste in violation of Section 21(d)(1) and (2) and 21(o)(6) of the Act and Section 807.305(c) of the Board's regulations. Third, the People allege Jersey Sanitation violated Section 807.318(b) for failing to abate gas after it stopped accepting waste, and Section 807.502 of the Board's regulations by failing to close the landfill in a manner that adequately controlled post-closure releases to groundwater and surface waters and to the atmosphere. AG Reply at 21.

### **Board Analysis Finding Violations as Alleged**

Jersey Sanitation does not dispute the substance of the alleged violations of closure requirements. Rather Jersey Sanitation sets forth the defense that its 1999 Agency-issued certificate of closure certifies that the landfill has been closed in accordance with all permit, regulatory and statutory requirements as of September 30, 1994. However, a certificate of closure certifies only that the facility has been closed in accordance with the closure plan for the facility, and does not provide the site with immunity from any alleged violations observed at the facility since September 30, 1994. Accordingly, the Board finds that Jersey Sanitation violated

Sections 21(o)(6) and 22.17(a), (b) of the Act and Section 807.305(c) of the Board's closure and post-closure requirements as alleged in count VII of the complaint.

### **Count VIII: Open Burning and Air Pollution**

#### **Applicable Law**

Section 9(a) and (c) of the Act provide:

No person shall:

- (a) Cause or threaten or allow the discharge or emission of any contaminant into the environment in any State so as to cause or tend to cause air pollution in Illinois, either alone or in combination with contaminants from other sources, or so as to violate regulations or standards adopted by the Board under this Act;
- \*\*\*
- (c) Cause or allow the open burning of refuse, conduct any salvage operation by open burning . . . . 415 ILCS 5/9(a), (c) (2002).

Section 21(o)(4) provides:

No person shall:

- (o) Conduct a sanitary landfill operation which is required to have a permit under subsection (d) of this Section, in a manner which results in any of the following conditions:
  - (4) open burning of refuse in violation of Section 9 of this Act . . . 415 ILCS 5/21(o)(4) (2002).

Section 237.102 of the Board's rules prohibits open burning:

- a) No person shall cause or allow open burning, except as provided in this Part.
- b) No person shall cause or allow the burning of any refuse in any chamber or apparatus, unless such chamber or apparatus is designed for the purpose of disposing of the class of refuse being burned.

#### **People's Arguments**

The People cite to documentation by Inspector Johnson of smoldering wood debris, boards, and landscape waste south of the landfill at the time of the inspection. AG Br. at 121.

The People allege that Jersey Sanitation violated Section 9(a) and (c) of the Act by causing air pollution and open burning. Further, the People allege violations of Section 21(o)(4) of the Act by operating a permitted sanitary landfill in a manner that results in the open burning of refuse. Finally, the People allege a violation of Section 237.102 of the Board's water pollution regulations by causing or allowing open burning of a waste that is not exempt under the Board's regulations. AG Br. at 122.

### **Jersey Sanitation's Arguments**

Jersey Sanitation concedes in its post-hearing brief that burning occurred, but that it did not occur on any part of the permitted landfill area. Rather, Jersey Sanitation maintains, the landscape waste fire occurred on farm ground located next to the landfill. Jersey Br. at 8. Jersey Sanitation contends that Mr. Johnson, the Agency inspector, has provided no basis for his belief that the burning occurred within the boundaries of the permitted landfill. Jersey Sanitation asserts that the Agency has the burden of proof to identify the location of the fire with respect to the permitted landfill. Jersey Br. at 8.

### **People's Arguments**

In reply, the People argue that Mr. Johnson disagrees with Mrs. Shourd's contention that any burning occurred outside of the permitted landfill boundaries. As discussed above in relation with the allegation of accepting compost waste on the permitted landfill, the People allege that Mr. Johnson re-inspected the site after receiving Mrs. Shourd's claims and determined the landscape waste was at least partially within the landfill boundaries. AG Br. at 22. The People contend the landfill operator at the time of the August 30, 1990 inspection could not explain why the waste was burning, yet the operator was attempting to extinguish the waste by covering it with soil. *Id.* Consequently, argue the People, the record supports the allegation that Jersey Sanitation violated Sections 9(a) and 21(o)(4) of the Act by causing or allowing the discharge of contaminants into the air and violated Section 9(c) of the Act and Section 237.102 of the Act for causing or allowing the open burning of waste. *Id.*

### **Board Analysis Finding Violations as Alleged**

Here, Jersey Sanitation does not dispute that burning of landscape waste occurred. Further, the Board found above that the landscape waste at the site was stockpiled partially within the boundaries of the permitted landfill. Accordingly, the Board finds Jersey Sanitation caused or allowed the open burning of refuse at the Jersey Sanitation landfill as alleged in count VIII of the second amended complaint.

### **REMEDY**

As previously stated, The People ask the Board to impose a civil penalty of \$65,000 against Jersey Sanitation, award the People \$24,100 in costs and attorney fees, and order Jersey Sanitation to perform a trend analysis of groundwater sample results, submit a groundwater assessment plan to the Agency for approval, and implement the plan within 30 days of approval by the Agency. If the sampling and assessments demonstrate violations, then the People request

that Jersey Sanitation submit a corrective action/remediation plan to the Agency for approval and implement the plan within 30 days of that approval.

The People also ask the Board to order Jersey Sanitation to cease and desist from all violations of the Act and Board regulations. Finally, the People also request that the Board order Jersey Sanitation to comply with its permit by submitting a biennial revision to its cost estimates within 60 days of the date of the Board's final disposition of this matter.

Jersey Sanitation does not discuss the 33(c) or 42(h) factors, yet argues that no penalty is warranted even after conceding several violations of the Act and Board regulations. Jersey Sanitation contends that the history of this site, the history of the permitting and enforcement process, and the history of environmental compliance together dictate that no penalty is warranted. Jersey Br. at 22-23. In summary, Jersey Sanitation requests that the Board "enter an order finding the existence of certain violations, but issuing no penalty." *Id.* Below the Board discusses the People's requested remedies in light of the 33(c) and 42(h) factors.

### **Section 33(c) Factors**

Section 33 of the Act regarding Board orders and determinations provides:

- (c) In making its orders and determinations, the Board shall take into consideration all the facts and circumstances bearing upon the reasonableness of the emissions, discharges or deposits involved including, but not limited to:
  - (i) the character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the people;
  - (ii) the social and economic value of the pollution source;
  - (iii) the suitability or unsuitability of the pollution source to the area in which it is located, including the question of priority of location in the area involved;
  - (iv) the technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges or deposits resulting from such pollution source; and
  - (v) any subsequent compliance. 415 ILCS 5/33(c) (2002).

In determining whether to impose a remedy, and if so, what kind of remedy is appropriate, the Board considers the entire record of facts and circumstances relating to the reasonableness of the respondent's violations of the Act.

**The Character and Degree of Injury to, or Interference With the Protection of the Health, General Welfare and Physical Property of the People**

The People argue this factor should be weighed against Jersey Sanitation because Jersey Sanitation failed to properly operate and maintain the landfill for over ten years. To support this argument, the People cite to inspector Rich Johnson's testimony that during the five inspections between August 30, 1990 and February 25, 1992, there was a serious threat to the surface water, leachate flowing into Sandy Creek, and exposed refuse at the facility that had potential for allowing contaminants into the groundwater. AG Br. at 123.

The Board finds that Jersey Sanitation did not comply with several permit requirements, at least one permit requirement for over 13 years, and remained in violation of the Board's solid waste regulations for more than ten years. Further, the record shows that Jersey Sanitation allowed leachate to enter waters of the State of Illinois on at least three occasions. The first occurred on January 23, 1991, the second on May 21, 1991, and the third instance took place on January 21, 2004. The Board weighs this factor against Jersey Sanitation.

**The Social and Economic Value of the Pollution Source**

The People contend that the facility would have social and economic value if it operated in compliance with its permit and applicable regulations. However, the People assert that because ongoing violations have created continuing costs and interferences with the environment, this factor should be weighed against Jersey Sanitation.

The Board finds that Jersey Sanitation has social and economic value as an employer and landfill for the community, but that its value is undercut by its history of non-compliance. Jersey Sanitation's 13-year history of groundwater contamination nullifies any social or economic value it may have had.

**The Suitability or Unsuitability of the Pollution Source to the Area in Which it is Located, Including the Question of Priority of Location in the Area Involved**

The People state that Jersey Sanitation originally received local siting because there was an emergency need for a landfill due to flooding. AG Br. at 124. The People contend that the record shows documented difficulties with the site. For example, Mrs. Shourd stated "our landfill design is one that is difficult to manage at best." AG Br. at 125; citing Tr. at 324. The People contend that the Board should not weigh this factor in making its determination. AG Br. at 125.

Again, the Board finds that if operated in compliance with the Act, Jersey Sanitation is suitable to the area in which it is located. However, here Jersey Sanitation operated in violation of the Act for over a decade. In some instances, the Board has found a facility is unsuitable to its location if the complainant had priority of location or if the source of pollution significantly increased its business subsequent to the complainant locating in the vicinity. Neither is the case here. In fact, the neighbors, after having moved to the area after the landfill was already sited, eventually purchased the landfill.

**The Technical Practicability and Economic Reasonableness of Reducing or Eliminating the Emissions, Discharges or Deposits Resulting from Such Pollution Source**

Next, the People argue it was technically practicable and economically reasonable for Jersey Sanitation to reduce or eliminate emissions by properly closing and maintaining the landfill, yet Jersey Sanitation failed to do so. The People argue that the Jersey Sanitation Landfill is only 10 acres in size and is, therefore, a relatively small landfill. AG Br. at 127; citing Tr. at 390. The People cite to People v. Gilmer, PCB 99-27 (Aug. 24, 2000) (*aff'd* No. 4-00-0809, 4th Dist. 2002) as an example of where the Board found that proper closure of a landfill is technically practicable and economically reasonable for the owners of the site. The People assert that like in Gilmer, the Board should find that the costs associated with complying with Jersey Sanitation's permit and applicable Board regulations, and performance of a groundwater assessment, are economically reasonable and technically practicable. Accordingly, the People urge the Board to weigh this factor against Jersey Sanitation. AG Br. at 128.

In response, Jersey Sanitation argues that unlike various other landfills that have cost the State millions of dollars to close, Jersey Sanitation closed the site on its own. Jersey Br. at 5; citing Gilmer, PCB 99-27 (Aug. 24, 2000). Jersey Sanitation does not dispute the technical practicability or economic reasonableness of closing the site, but states simply that it did not have the finances to comply with closure requirements any sooner.

The Board finds that the existence of other instances where the Agency has had to intervene in order to remediate an abandoned site or prevent harm to the environment do not bear on the issue of the technical practicability or economic reasonableness or reducing or eliminating the discharges here. The Act and Board rules make clear that proper landfill closure is the responsibility of the owner and operator. Further, Jersey Sanitation has made no argument disputing the technical feasibility or economic reasonableness of properly closing and maintaining the site. Accordingly, the Board finds that compliance was both technically practicable and economically reasonable, and weighs this factor against Jersey Sanitation.

**Any Subsequent Compliance**

As to subsequent compliance, the People argue that, prior to 1995, Jersey Sanitation made little progress in improving conditions or pursuing compliance with applicable regulations and permit conditions at the landfill. AG Br. at 129. The People further contend that although Jersey Sanitation has taken steps to correct a portion of the violations, Jersey Sanitation still has not brought the site into compliance with groundwater and financial assurance requirements. For example, Mr. Blake Harris testified that Jersey Sanitation was out of compliance with financial assurance requirements from February 8, 1993 through October 5, 1999. Then again since March 15, 2001, respondent has failed to submit revised cost estimates, and has been out of compliance since that date. AG Br. at 130. Further, the People assert that while Jersey Sanitation has submitted quarterly monitoring results, respondent has never acknowledged or remedied the exceedences of the Board's groundwater quality standards at the landfill. AG Br. at 130.



Again, Jersey Sanitation simply argues that the Agency certification of closure indicates that Jersey Sanitation came into compliance as of September 30, 1994. Jersey Br. at 6. Jersey Sanitation states that it did all that it could to come into compliance. Jersey Br. at 22. The record indicates that Jersey Sanitation has taken steps to close the facility, seek siting approval for exceedences of its permitted boundaries, and attempted to satisfy cover requirements. However, inspection reports completed after the People initiated this action show Jersey Sanitation remains in violation and groundwater testing performed in 2003 shows exceedences. The Board weighs this factor against Jersey Sanitation.

### **Section 42(h) Factors**

The Board is expressly authorized by statute to consider the factors in Section 42(h) of the Act in determining an appropriate penalty. In addition, the Board must bear in mind that no formula exists, and the Board must consider all facts and circumstances of record that may mitigate or aggravate the penalty amount. Gilmer, PCB 99-27, slip op. at 6; 415 ILCS 5/42(h) (2002).<sup>2</sup>

The People ask the Board to order Jersey Sanitation to pay a civil penalty of \$65,000 to promote compliance with the Act. Above the Board found that Jersey Sanitation violated 15 different sections of the Act and 16 different sections of the Board regulations, with groundwater violations lasting 13 years. Pursuant to Section 42(a) of the Act, the Board may order Jersey Sanitation to pay a civil penalty of \$50,000 for each of these violations. In addition, Section 42(a) allows the Board to impose an additional civil penalty of \$10,000 per day for each day the violation continues. The Board has already discussed above the factors set forth in Section 33(c) of the Act. Below, the Board will address the Section 42(h) factors in determining the appropriate amount of civil penalty.

Section 42 of the Act regarding civil penalties provides:

(h) In determining the appropriate civil penalty to be imposed under subdivisions (a), (b)(1), (b)(2), (b)(3), or (b)(5) of this Section, the Board is authorized to consider any matters of record in mitigation or aggravation of penalty, including but not limited to the following factors:

(1) the duration and gravity of the violation;

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<sup>2</sup> Section 42(h) of the Act was substantially amended by P.A. 93-575, effective January 1, 2004. Among other things, the amendments establish that a violator's economic benefit from delayed compliance is to be the minimum penalty amount. The hearing in this proceeding began in September 2003 and was continued in January 2004. Accordingly, the parties did not prepare evidence or arguments specific to the additional factors in the amendment. *See* AG Br. at 136. Therefore, the Board will not use the amendments in determining the appropriate penalties to impose on respondents.

- (2) the presence or absence of due diligence on the part of the violator in attempting to comply with requirements of this Act and regulations thereunder or to secure relief therefrom as provided by this Act;
- (3) any economic benefits accrued by the violator because of delay in compliance with requirements;
- (4) the amount of monetary penalty which will serve to deter further violations by the violator and to otherwise aid in enhancing voluntary compliance with this Act by the violator and other persons similarly subject to the Act; and
- (5) the number, proximity in time, and gravity of previously adjudicated violations of this Act by the violator.

### **People's Arguments**

With regard to the Section 42(h) factors, the People argue that many of the violations have continued for periods of greater than five years and specifically with regard to groundwater quality standards, Jersey Sanitation has been in violation since 1991, for a total of 13 years of ongoing violations. AG Br. at 131.

Further, the People argue the gravity of the violations is significant. Landfill inspection reports dating back to the early 1990s document threats to surface and groundwater. AG Br. at 131. The People contend that by utilizing an inadequate monitoring plan, Jersey Sanitation has threatened the general welfare and health of the people and protection of the environment, including protection of the state's groundwater resource. AG Br. at 131-32.

The People argue Jersey Sanitation lacks diligence in attempting to comply with the Act and Board rules. As discussed above, several of the violations continued for over five years. Another example of lack of diligence, claims the People, is that the over-height condition was first identified on January 23, 1991, and Jersey Sanitation did not secure siting approval for the height violations until 1999. AG Br. at 134.

The People assert that two figures represent the minimal economic benefit Jersey Sanitation enjoyed by failing to comply with its permit, the Act, and Board regulations. First, the People state that Jersey Sanitation realized a benefit of \$25,233.53 by not meeting financial assurance requirements for the site. AG Br. at 136; citing Compl. Exh. 7, 8, 9, 10, and 11. Second, the People argue that Jersey Sanitation avoided spending \$9,000 by not performing a required groundwater assessment. The People contend Mr. Rathsack arrived at this figure because he was asked by Jersey Sanitation to do a comparison of cost estimates while Jersey Sanitation was preparing the 1999 application for a supplemental permit. AG Br. at 136.

The People note that on March 21, 1991, the Agency filed an administrative citation against Jersey Sanitation, to which Jersey Sanitation did not contest. Jersey Sanitation paid the penalty on April 29, 1991. AG Br. at 137; citing Parties Exh. 11, 12, 13, 14, 16, and 17.

Together, the estimate for a groundwater assessment and the amount of financial assurance requirements left unpaid, representative of the benefit of costs avoided, total \$34,433. In addition, the People assign the value of the duration and gravity of the violations as \$30,567.

In sum, the People request a \$65,000 for the conceded violations alone as an amount sufficient to deter violations by Jersey Sanitation and those similarly situated and encourage compliance with the Act. AG Br. at 137; AG Reply at 7. The People explain that the conceded violations represent both first time and repeat ongoing violations. *Id.*

### **Jersey Sanitation's Arguments**

In response, Jersey Sanitation disputes that it enjoyed an "economic benefit" of \$25,233.53, by failing to sufficiently fund its closure/post-closure care fund. Jersey Sanitation maintains that the shareholders used all of the revenue from the landfill to pay for landfill operations and fund the closure/post-closure account. Further, Jersey Sanitation contends that the \$6,000 alleged by the People as the cost of the "economic benefit" for not performing a groundwater assessment is absurd. Jersey Sanitation contends that in the previous permit appeal the Board struck the requirement mandating the type of groundwater assessment the People now propose. Jersey Br. at 16-17.

### **People's Reply**

In response to Jersey Sanitation's argument regarding economic benefit, the People clarify that Jersey Sanitation cannot choose whether to pay money into the closure/post closure fund; Jersey Sanitation must do so by law. The People state Jersey Sanitation's calculation merely represents the advantage it gained through non-compliance. AG Reply at 25. The People also dispute Jersey Sanitation's statement that it put all of the landfill revenue into the operation and closure of the landfill. *Id.* The People state the record merely contains a single statement by Mrs. Shourd that every cent went into the landfill. Further, state the People, even though Jersey Sanitation had purchased ten pieces of equipment by 1992 to compact trash and dirt, the record shows that the landfill showed no signs of compliance with cover requirements until 1995. AG Br. at 31.

The \$9,000 cost figured for failure to perform a groundwater assessment, argue the People, is also appropriate. AG Reply at 26. The People reason that for many years, Jersey Sanitation had an obligation to conduct a groundwater assessment pursuant to Section 807.315 and the landfill's permit conditions. *Id.* The People continue that Jersey Sanitation has never performed one, and \$9,000 is "certainly a legitimate part of any cost-savings calculation." AG Reply at 27.

### **Penalty Analysis**

Based on the 33(c) factors, the Board finds a civil penalty is appropriate. After consideration of the 42(h) factors, the Board will impose the People's requested civil penalty of \$65,000. Section 42(a) provides for a civil penalty not to exceed \$50,000 for violating a provision of the Act or Board regulation and an additional civil penalty not to exceed \$10,000 for each day during which the violation continues. By multiplying \$50,000 times twelve (the number of sections of the Act and Board regulations that respondents are alleged to have violated), a potential civil penalty of \$600,000 is reached.

Add to that sum, a civil penalty of \$10,000 a day for each day of noncompliance with those sections, and the total maximum penalty could amount to a multimillion-dollar penalty. The complainant moves the Board to impose a civil penalty of \$65,000.

The Board finds that the duration and gravity of the violations, the lack of diligence on the part of Jersey Sanitation Corporation, and the economic benefits that Jersey Sanitation accrued through noncompliance warrant a substantial civil penalty. The permit requirement is an essential part of the State's enforcement program to protect against environmental damage, and the record clearly shows that Jersey Sanitation violated its various permits, the Act, and Board regulations for 13 years. Further, Jersey Sanitation caused water pollution by allowing leachate from the landfill to enter waters of the State, and has violated certain financial assurance requirements since 1993.

The Board finds there was actual harm to the environment since wells downstream of the site showed exceedences of class II groundwater quality standards, while wells upstream showed none. Further, leachate was observed entering Sandy Creek on four occasions. The permit requirements are an essential part of the State's enforcement program to protect against damage to the environment and public welfare. The failure to adequately provide financial assurance is also a grave offense. In ESG Watts I, the Board stated "the funding of the financial assurance is an obligation every owner of a landfill in Illinois owes the taxpayers of this State and is part and parcel of the cost of doing business here." ESG Watts I, slip op. at 133-34 (assessing a \$232,000 civil penalty for financial assurance violations alone).

Jersey Sanitation has not diligently attempted to comply and has benefited by delaying necessary expenditures. For example, the record shows that Jersey Sanitation has not performed a groundwater analysis and failed to fund the closure/post-closure fund in accordance with the Board's solid waste regulations. Jersey Sanitation has owned the facility since 1989, and on only one occasion has the Agency inspected the site and found no violations. In fact, at recent inspections done on January 21 and February 17, 2004, Inspectors Johnson and King found leachate present at the site and entering Sandy Creek. The Board weighs the first three factors in aggravation of the civil penalty.

The Board also finds that the proposed amount will serve to deter further violations by Jersey Sanitation and similarly-situated entities.

The Agency filed an administrative citation against Jersey Sanitation in 1991. IEPA v. Jersey Sanitation Co., AC 91-10 (May 9, 1991). Because Jersey Sanitation did not contest the

citation, the Board imposed a penalty, which Jersey Sanitation paid on April 29, 1991. The Board weighs this factor against Jersey Sanitation.

The Board finds that \$34,433 the People request as representative of the costs avoided and the value the People assign to the duration and gravity of the violations, \$30,567, are appropriate. Because the violations have been ongoing for many years, even after the facility closed in 1992, a \$65,000 penalty is necessary to deter Jersey Sanitation and similarly situated entities from violating the Act and Board regulations.

In addition to imposing a penalty, the Board will also require Jersey Sanitation to take steps to bring the site into compliance and prevent further violations. The Board will order Jersey Sanitation to cease and desist further violations of the Act and Board regulations. Incidental to the cease and desist order, Jersey Sanitation will be ordered to comply with the requirements of its permits, including groundwater sampling, analysis, and reporting (supplemental permit No. 1999-209-SP, conditions C.5 through C.7., and the groundwater monitoring plan contained in Jersey Sanitation's 1999 supplemental permit application, Attachment 5), financial assurance requirements, and a biennial revision of its cost estimates (supplemental permit No. 1999-209-SP, condition B.3). Further, the Board orders Jersey Sanitation to develop a groundwater assessment plan, submit the plan to the Agency for approval, and implement the plan within 30 days of the Agency's approval. If the results of the groundwater sampling and assessment plan demonstrate exceedences attributable to Jersey Sanitation Landfill, this order requires Jersey Sanitation to develop and submit a corrective action plan to the Agency for approval, and implement the plan within 30 days of the Agency's approval.

### **ATTORNEY FEES**

Finally, the People have requested attorney fees and costs in accordance with Section 42(f) of the Act (415 ILCS 5/42(f) (1996)), that provides in relevant part:

Without limiting any other authority which may exist for the awarding of attorney's fees and costs, the Board may award costs and reasonable attorney's fees, including the reasonable costs of expert witnesses and consultants, to the State's Attorney or the Attorney General in a case where he has prevailed against a person who has committed a willful, knowing or repeated violation of the Act. 415 ILCS 5/42(f) (2002).

According to the People, the ongoing violations at Jersey Sanitation Landfill were knowing and willful violations of the Act, regulations, and permit conditions and therefore, the People request attorney fees. The People request fees at an hourly rate of \$150 per hour for the first 154 hours spent enforcing this matter for a total of \$24,100.

From the facts found above, the Board finds that the violations in this proceeding meet the provisions of Section 42(f) of the Act. Jersey Sanitation knew it was responsible for closure of the landfill and for complying with all of the related laws and regulations. Jersey Sanitation spoke with the Agency before purchasing the landfill, and had been issued an administrative

citation for certain violations in 1991, almost 14 years ago. Further, Jersey Sanitation did not contest the rate or number of hours that the People request. The Board grants the request for attorney fees and orders Jersey Sanitation to pay fees in the amount of \$24,100.

### **CONCLUSION**

This order finds all of the remaining contested violations, imposes a \$65,000 civil penalty, and awards the People \$24,100 in attorney fees. The Board also denies the People's motion for sanctions and upholds the hearing officer's rulings at hearing.

### **ORDER**

1. The Board finds that Jersey Sanitation Corporation (Jersey Sanitation) violated the following provisions of the Environmental Protection Act: 9(a), (c), 12(a), (d), 21(d)(1), (2), 21(e), 21(o)(1), (2), (3), (4), (5), (6), 21.1(a), and 22.17. 415 ILCS 5/9(a), (c), 12(a), (d), 21(d)(1), (2), 21(e), 21(o)(1), (2), (3), (4), (5), (6), 21.1(a), and 22.17 (2002).
2. The Board finds that Jersey Sanitation violated the following provisions of the Board's regulations: 237.102(a), 620.420(a), (d), 807.301, 302, 305(a), (c), 313, 314(e), 315, 318(b), (c), 502, 601, 603(b)(1), and 623. 35 Ill. Adm. Code 237.102(a), 620.420(a), (d), 807.301, 302, 305(a), (c), 313, 314(e), 315, 318(b), (c), 502, 601, 603(b)(1), and 623.
3. No later than April 4, 2005, which is the first business day following the 60th day after the date of this order, Jersey Sanitation must pay \$65,000 in civil penalties and \$24,100 in attorney fees of the People of the State of Illinois. Jersey Sanitation must pay the civil penalty by certified check or money order, payable to the Environmental Protection Trust Fund. Jersey Sanitation must pay the attorney fees by certified check or money order, payable to the Hazardous Waste Fund. The case number, case name, and Jersey Sanitation's social security number or federal employer identification number must be included on each certified check or money order.
4. Jersey Sanitation must send each certified check or money order to:
 

Illinois Environmental Protection Agency  
Fiscal Services Division  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9276
5. Jersey Sanitation must perform a trend analysis of groundwater sample results. Jersey Sanitation must retain a professional engineering firm to develop a groundwater assessment plan, submit the plan to the Agency, and implement the plan within 30 days of approval by the Agency. If the results of the groundwater

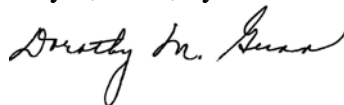
sampling and assessment plan demonstrate exceedences attributable to Jersey Sanitation Landfill, Jersey Sanitation must submit a corrective action plan to the Agency for approval, and implement the plan within 30 days of the Agency's approval.

6. Jersey Sanitation must comply with its permits and all applicable permit conditions, including Section B.3. of supplemental permit No. 1999-209-SP. Jersey Sanitation must submit a revised cost estimate for post-closure care by April 4, 2005, which is 60 days of the date of this order.
7. Jersey Sanitation must cease and desist from further violations of the Act and Board regulations.
8. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Act (415 ILCS 5/42(g) (2002)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2002)).

IT IS SO ORDERED.

Section 41 (a) of the Environmental Protection Act provides that final Board orders may be appealed directly to the Illinois Appellate Court within 35 days after the Board serves the order. 415 ILCS 5/41(a) (2002); *see also* 35 Ill. Adm. Code 101.300(d)(2), 101.906, 102.706. Illinois Supreme Court Rule 335 establishes filing requirements that apply when the Illinois Appellate Court, by statute, directly reviews administrative orders. 172 Ill. 2d R. 335. The Board's procedural rules provide that motions for the Board to reconsider or modify its final orders may be filed with the Board within 35 days after the order is received. 35 Ill. Adm. Code 101.520; *see also* 35 Ill. Adm. Code 101.902, 102.700, 102.702.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on February 3, 2005, by a vote of 4-0.



Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board