

ILLINOIS POLLUTION CONTROL BOARD
June 4, 1992

COUNTY OF OGLE,)
)
 Complainant,)
)
 v.) AC 91-45
) (91-R-1003)
) (Administrative Citation)
 ROCHELLE DISPOSAL SERVICE,)
 INC., and CITY OF ROCHELLE,)
 ILLINOIS,)
)
 Respondent.)

ORDER OF THE BOARD (by J.C. Marlin):

This action was initiated on September 27, 1991 by the filing of an administrative citation (AC) by the County of Ogle (County). The AC charges Rochelle Disposal Services (Rochelle Disposal) and the City of Rochelle (City) with violation of Section 21(p)(5) of the Act.¹ Both respondents filed a petition for review on October 11, 1991. Hearing was held in this matter on April 29, 1992, despite the pendency of several motions preliminary to hearing which are the subject of this Order. Pursuant to the parties request at hearing as repeated in the County's May 15, 1992 motion to supplement and reserve ruling, the Board has delayed decision on the pending motions until its receipt of the hearing transcript and exhibits.²

The pending motions are Rochelle Disposal's April 6, 1992 motion for leave to file instanter accompanied by a motion to strike and dismiss the complaint and its April 8, 1992 motion to supplement the April 6 motion. The County filed motions to strike and dismiss Rochelle's motions on April 9 and 15, 1992.

On April 15, 1992, Rochelle Disposal moved for leave to respond to the County's motions and also filed the response. Rochelle Disposal also filed a motion for summary judgment. The County filed a response in opposition on April 22.

¹Section 21 of the Act was amended by Public Act 87-752, effective January 1, 1992. As a result, the two subsections enforceable through the administrative citation process have been changed from 21(p) and 21(q) to 21(o) and 21(p) respectively.

²In the interests of consistency, the Board has also delayed decision on similar motions pending in two other appealed AC cases involving these parties: AC 91-32 and AC 92-26.

The basis for Rochelle Disposal's motion to dismiss is that it is not a proper party to this action. The County's motion to strike is based on the allegation that the motion is not timely filed. The Board first addresses the County's motion.

Section 103.140 provides that motions to dismiss shall be filed within 14 days after receipt of the complaint. Rochelle Disposal's motion was not filed until some six months thereafter. Rochelle Disposal asserts that it had not previously filed the motion based on conversations and correspondence with the State's Attorney to the effect that prosecution of this matter would be reviewed in light of IEPA v. City of Rochelle, AC 89-68, a case from which Rochelle Disposal had been dismissed as a respondent upon stipulation of the parties. The County does not dispute this contention, but states that "no specific statements were made waiving the time restrictions" pursuant to Board rules.

The Board finds that under these circumstances Rochelle Disposal could reasonably have construed and relied upon its ongoing communications with the County as a waiver of any objection to late filing. Rochelle Disposal's April 6 motion for leave to file the motion to dismiss as well as its April 8 motion to supplement are hereby granted. The County's motion to strike and dismiss is denied. Respondent's April 15 motion for leave to file a response is hereby granted. The result of these rulings are that all filings are accepted.

The Board now turns to the motions to dismiss and for summary judgment. As hearing has been held in this matter, the motion for summary judgment is denied. As to the motion to dismiss, Rochelle Disposal argues that it is not a proper party to this action because the City is the person which holds the permits for this site, and because it was previously dismissed as a party to AC 89-68 pursuant to stipulation. There is no dispute that the City holds all permits at the site, or that Rochelle Disposal conducts waste disposal operations at the site on the City's behalf pursuant to contract. The County argues that Section 21(p) of the Act, under which Rochelle Disposal is charged, is not by its terms limited to holders of permits. The Section in pertinent part provides that "no person (emphasis added) shall 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".

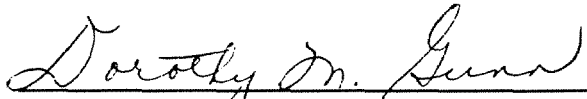
The preamble to the contract between the City and Rochelle Disposal provides that it is "for the operation of the City owned landfill". Article I goes on to provide that Rochelle Disposal is to "furnish all equipment and labor necessary for the collection of garbage within the City...together with the landfill operation necessary to dispose of all the solid waste in conformance with" the Act and Board regulations, as well as other requirements (City, April 22, 1992 Response to Motion, Contract, p. 1).

The Board agrees with the County that, under the circumstances of this case, Rochelle Disposal is properly a party to this action as a person conducting a waste operation at a permitted site.

The motion to dismiss is hereby denied.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 4th day of June, 1992, by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board