

ILLINOIS POLLUTION CONTROL BOARD  
September 23, 1993

COUNTY OF OGLE, )  
 )  
 Complainant, )  
 )  
 v. ) AC 91-32  
 ) S.A. File # 91-R-1002  
 ) (Administrative Citation)  
 )  
 ROCHELLE DISPOSAL SERVICE, )  
 INC., and CITY OF ROCHELLE, )  
 ILLINOIS, )  
 )  
 Respondents. )

MS. ROBBIN STUCKERT, ASSISTANT STATE'S ATTORNEYS OF OGLE COUNTY,  
APPEARED ON BEHALF OF THE PETITIONER;

MR. KURT KLEIN APPEARED ON BEHALF OF ROCHELLE DISPOSAL SERVICES,  
INCORPORATED.

OPINION AND ORDER OF THE BOARD (by C. A. Manning):

This action was initiated on June 28, 1991, by the filing of an administrative citation by the County of Ogle (County). The administrative citation was filed pursuant to Section 31.1 of the Illinois Environmental Protection Act (Act). The authority to issue administrative citations was delegated to the County pursuant to Section 4(r) of the Act. (415 ILCS 5/31.1 and 5/04(r) (1992).) The administrative citation charges Rochelle Disposal Services (Disposal) and the City of Rochelle (City) with violation of Section 21(o)(1) and 21(o)(12) of the Act.<sup>1</sup>

A public hearing in this matter was held pursuant to Section 32 of the Act on April 15, 1993, at the Ogle County Courthouse in Oregon, Illinois, before the Pollution Control Board Hearing Officer Mr. Peter Smith. Pursuant to a post-hearing briefing schedule, Disposal filed a memorandum and argument in support of its position in this case on June 1, 1993. No other briefs were filed in this matter.

FACTS

The City of Rochelle owns a sanitary landfill located in the

<sup>1</sup> Section 21 of the Act was amended by Public Act 87-752, effective January 1, 1992. As a result, the two subsections that the County filed alleging violation, 21(p)(1) and (12) were changed to 21(o)(1) and (12).

city limits referred to as Rochelle Municipal #2 Landfill. The City of Rochelle contracted with Disposal to operate the landfill. Pursuant to the operating permit, Disposal begins operations at 7:00 a.m. (Exh. 4 at 13.)<sup>2</sup> The County's inspector, Steven Rypkema, inspected the site on April 29, 1991, beginning at 7:04 a.m. and ending at 10:02 a.m. (Tr. at 11, 12,13).

Rypkema stated that upon arrival to the site there was a dump truck unloading waste at the active area of the site where the daily cover had already been removed. (Tr. at 20, 21, 22, Exh. 2a and 2b). Litter was located on the site in the southern direction of the active area. (Tr. at 24-34, Exh. 2c-e). In addition, litter lined the banks in the southern portion of a nearby creek which borders the south and east perimeters of the site. (Tr. at 22-34, Exh. 2f-g). The litter consisted of paper and similar materials. (Tr. at 17-35, Exh. 2a-1). Mr. Rypkema stated that the weather conditions were cool and cloudy with the winds from the southeast. (Tr. at 34). In the inspection report entered into the record as County's Exhibit 3, Rypkema stated that the wind velocity was somewhere between 5-15 miles per hour (mph). At the hearing he more specifically testified that the wind velocity to be 5-10 mph from the southeast. (Exh. 3 at 12, Tr. at 61).

Located south of the site is an open dump which is roughly 40 to 50 feet away from the creek where Mr. Rypkema observed refuse.<sup>3</sup> The open dump's northern border has no barriers with only a few scattered trees between it and the creek. (Tr. at 99.) Following the inspection the County notified the respondents of the possible violations based upon the inspection. (Tr. at 64). In a letter to the County in response to the notification, respondents stated that due to high winds the previous day's litter was blown off-site and that their first priority was to collect the off-site litter and then collect the on-site litter. They stated that they were in the process of cleaning up that litter on the day of the inspection. (Tr. at 65).

Based upon this inspection the County filed an administrative citation for the violation of Section 21(o)1 and

<sup>2</sup> The County entered into the record a hand drawn diagram depicting the various locations of the observed litter, corresponding photographs of the site, and the inspection report, and permit respectfully, as County's Exhibits 1, 2, 3 and 4. The Transcript will be referred to as "Tr." and the exhibits will be referred to as "Exh.".

<sup>3</sup> There is no evidence in the record as to ownership of the open dump.

(12) of the Act, failing to collect and contain litter from the site by the end of the operating day and allowing refuse in standing or flowing water, respectively.

### ISSUES

#### A. Proper Party

In its memorandum and argument<sup>4</sup> submitted to the Board on June 1, 1993, Disposal claims that it is not a proper party since it does not "conduct" a sanitary landfill operation as the term is intended in the Act. (Mem. at 5-6.) Disposal states that the permit to operate a landfill at the site in question was issued by the Illinois Environmental Protection Agency to the City and that Disposal merely has a contract to work at the site. (Mem. at 6.) Thus, Disposal argues it is a contractor, not an operator. (Mem. at 6.)

#### B. Section 21(o)(1) and (12) violation<sup>5</sup>

Disposal argues that the County has failed to demonstrate (1) that the observed litter on the site was from the previous operating day in violation of Section 21(o)(12), and (2) that it caused or allowed refuse in standing or flowing water in violation of Section 21(o)(12) of the Act.

### DISCUSSION

#### A. Proper Party

The question of Disposal being a proper party to this action has been previously decided. On June 4, 1992, the Board in this case issued an order denying Disposal's motion to strike and dismiss. We stated: that "Rochelle Disposal is properly a party to this action as a person conducting a waste operation at a permitted site." (County of Ogle v. Rochelle Disposal Service,

<sup>4</sup> The memorandum and argument filed by Disposal on June 1, 1993 will be referenced as "Mem.".

<sup>5</sup> Section 21(0)(1) and (12) of the Act states:

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:

1. refuse in standing or flowing water;

12. failure to collect and contain litter from the site by the end of each operating day

Inc., and The City of Rochelle, (June 4, 1992) AC 91-32, PCB at, 2., See also County of Ogle. Rochelle Disposal Service, Inc., and The City of Rochelle, (October 1, 1992) AC 92-64, PCB at, 260.)<sup>6</sup>

B. Did Disposal violate Section 21(o)(1) by failing to collect and contain litter from the site by the end of the operating day.

Mr. Rypkema inspected the site and documented through direct observation and photographs the extensive proliferation of litter throughout the site. Rypkema began his inspection at 7:04 a.m., four minutes after the site was permitted to began its operations. (Exh. 4 at 13.) The photographs of the litter at the site vary in the times taken with the first being taken at 7:14 a.m. and the last taken 8:10 a.m. Disposal argues that the evidence does not demonstrate that the litter is from the previous operating day. (Memo at 3.)

The winds on the day of the inspection were coming from the southeast at somewhere between 5-10 mph. The observed litter was to the south of the active area in the opposite direction of where the wind was blowing on that day. Respondents stated they were in the process of cleaning the litter the day of the inspection. They claimed the litter had been blown off-site due to heavy winds the day before. Section 21(o)(12) of the Act states that a violation occurs when there is a failure to collect and contain litter at the end of each operating day. (415 ILCS 5/21(o)(12).) Based on the record the Board finds that the observed litter was from the previous operating day. For the above stated reason the Board finds Disposal in violation of Section 21(o)(12) of the Act.

C. Did Disposal violate Section 21(o)(1) by conducting its landfill in a manner to allow litter in standing or flowing water in violation of Section 21(o)(1).

The County also is alleging the violation of Section 21(o)(1) of the Act for operating a landfill in such a manner that allows for refuse to be in standing or flowing water. The record indicates that a 65 foot stretch of a creek located a 1/4 a mile south of the active area of the landfill site contained refuse. While Disposal makes the argument that the refuse in the creek could have come from the open dump, record evidence shows that the directional flow of the litter near the creek is

<sup>6</sup> Pursuant to the Act, Disposal is a person conducting a waste operation at a permitted site. The pertinent section of 21(o) of the Act states: "no person 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:...." (415 ILCS 5/21(o)(1)).

consistent with the flow from the previous day's litter. Moreover, Disposal produces no credible evidence which conflicts with this conclusion. Rather, such conclusion is buttressed by the testimony of the County inspector. We therefore find Disposal in violation of Section 21(o)(1).

For these reasons, and since Disposal did not argue the "uncontrollable circumstances" defense pursuant to Section 31.1(d)(2), the Board finds respondent in violation of Section 21(p)(1) of the Act.

#### PENALTY

Penalties in administrative citation actions are prescribed by Section 42(b)(4) of the Act which states:

In an administrative citation action under Section 31.1 of this Act, any person found to have violated any provision of subsection (p) of Section 21 of this Act shall pay a civil penalty of \$500 for each violation of each such provision, plus any hearing costs incurred by the Board and the Agency. Such penalties shall be made payable to the Environmental Protection Trust Fund to be used in accordance with the provisions of "An Act creating the Environmental Protection Trust Fund", approved September 22, 1979, as amended; (415 ILCS 5/42(b)(4) (1992).)

Respondents will therefore be ordered to pay a civil penalty of \$1000 based on the violations as found. Further, pursuant to Section 42(b)(4) of the Act, respondents are also required to pay hearing costs incurred by the Board and the County. The Clerk of the Board and the County of Ogle will therefore be ordered to each file a statement of costs, supported by affidavit, with the Board and with service upon respondents. Upon receipt and subsequent to appropriate review, the Board will issue a separate final order in which the issue of costs is addressed. Additionally, Docket B will be opened to treat all matters pertinent to the issue of costs.

This opinion constitutes the Board's findings of fact and conclusions of law in this matter.

#### ORDER

1. Respondents, the City of Rochelle and Rochelle Disposal Inc., are hereby found to have violated 415 ILCS 5/21(o)(5) (1992).
2. Within 30 days of this order, the Respondents shall pay the sum of one thousand dollars (\$1000.00) by check or money order to the Ogle County Treasurer. The payment shall be mailed to:

Ogle County Treasurer  
 Ogle County Courthouse  
 P.O. Box 40  
 Oregon, Illinois 61061.

Respondents shall also write their Federal Employer Identification Number or Social Security Number on the certified check or money order.

Any such penalty not paid within the time prescribed shall incur interest at the rate set forth in subsection (a) of Section 1003 of the Illinois Income Tax Act, (35 ILCS 5/1003 (1992)), as now or hereafter amended, from the date payment is due until the date payment is received. Interest shall not accrue during the pendency of an appeal during which payment of the penalty has been stayed.


3. Docket A in this matter is hereby closed.
4. Within 30 days of this order, the County shall file a statement of its hearing costs, supported by affidavit, with the Board and with service on the Respondents. Within the same 30 days, the Clerk of the Pollution Control Board shall file a statement of the Board's costs, supported by affidavit and with service upon the Respondents. Such filings shall be entered in Docket B of this matter.
5. Respondents are hereby given leave to file a reply/objection to the filings as ordered in paragraph 4 of this order within 45 days of this order.

IT IS SO ORDERED.

Board Member J. Theodore Meyer dissents.

Section 41 of the Environmental Protection Act (415 ILCS 5/41 (1992).) provides for appeal of final orders of the Board within 35 days. The rules of the Supreme Court of Illinois establish filing requirements. See also, 35 Ill. Adm. Code 101.246, Motions for Reconsideration.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above opinion and order was adopted on the 29<sup>th</sup> day of September, 1993, by a vote of 6-1.

  
 Dorothy M. Gunn, Clerk  
 Illinois Pollution Control Board