

ILLINOIS POLLUTION CONTROL BOARD
April 8, 1993

COUNTY OF OGLE,)	
)	
Complainant,)	
)	
v.)	AC 91-45
)	Dockets A & B
)	(County No. 91-R-1003)
ROCHELLE DISPOSAL SERVICE,)	(Administrative Citation)
INC., and CITY OF ROCHELLE,)	
ILLINOIS,)	
)	
Respondents.)	

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

This matter is before the Board on a motion for reconsideration of the Board's January 7, 1993 order in this matter.¹ The motion was filed on February 8, 1993, by respondent Rochelle Disposal, Inc. (Disposal). The City of Rochelle did not join in the motion or file its own motion for reconsideration. The County of Ogle (County) did not file a response.

In its motion for reconsideration, Disposal makes three arguments. First, Disposal argues that the only credible direct evidence concerning the alleged violations demonstrates that Disposal complied with the daily cover requirement. (Motion at 1.) Next, Disposal argues that contrary to the Board's June 4, 1992 order, Disposal should not be subject to enforcement actions under the Environmental Protection Act (Act). (Motion at 4.) (415 ILCS 5/01 et. seq. (1992).) Finally, Disposal argues that the Board should decrease the amount of money Disposal is required to pay under docket B of this action. (Motion at 7.) The Board hereby grants Disposal's motion for reconsideration in order to address arguments one and three.

The issues raised by Disposal in argument two of its motion specifically address the Board's June 4, 1992 order. (See, motion at 4.) Disposal's motion does not raise any new issues of law or fact. Therefore, the Board denies Disposal's motion for reconsideration with respect to argument two.

DOCKET A

The Board now moves to Disposal's first argument. In its

¹Citations to the Board's January 7, 1993 opinion will be opinion at ____.

motion, Disposal argues that the only credible direct evidence in this action demonstrates that Disposal did comply with the daily cover requirements at the landfill. (Mot. at 1.) Additionally, Disposal argues that the violation may not be inferred from circumstantial evidence when the existence of another fact inconsistent with the violation can be inferred with equal certainty from the same evidence. (Mot. at 2.) In support of this argument Disposal cites, Royal Elm Nursing v. Northern Illinois Gas Co., 172 Ill. App. 3d 74, 526 N.E.2d 376, 122 Ill. Dec. 117 (1st Dist. 1988). The Board notes that Disposal does not raise any new issues of fact.

The Board disagrees with Disposal's argument that a violation may not be inferred from circumstantial evidence. The Illinois Supreme Court in Mort v. Walter, 98 Ill. 2d 382, 457 N.E.2d 9, 75 Ill. Dec. 219 (1983), stated:

The use of circumstantial evidence is not limited to those instances in which the circumstances support only one logical conclusion. Instead, circumstantial evidence will suffice whenever an inference may reasonably be drawn therefrom. [citations omitted]

(98 Ill. 2d at 396.)

Additionally, in People v. Robinson, 14 Ill. 2d 325, 153 N.E.2d 65 (1958), the Supreme Court stated that, "the law makes no legal distinction between direct and circumstantial evidence as to the weight and effect thereof." (14 Ill. 2d at 331.)

Recently, in Moore v. Swoboda, 213 Ill. App. 3d 217, 571 N.E.2d 1056, 157 Ill. Dec. 37 (4th Dist. 1991), the fourth district declined to follow Royal Elm because the appellate court concluded that Royal Elm supported a result contrary to the unequivocal holding of the Supreme Court in Mort.

Therefore, based upon the applicable case law, the Board reaffirms its opinion and order of January 7, 1993.

DOCKET B

Section 42(b)(4) of the Act provides that any person found in violation of an administrative citation (AC) provision shall pay a fine of \$500.00 per violation plus any hearing costs incurred by the Agency and the Board. On January 7, 1993, the Board found respondents in violation of Section 21(o)(5) of the Act and imposed a penalty of \$500.00. The Board also directed the Clerk of the Board and the Agency to file statements of costs within 30 days of the January 7, 1993 opinion and order. On January 14, 1993 the Clerk of the Board filed a statement of costs totaling \$739.37. The Agency did not file a statement of

costs in this matter. Disposal's third argument in its motion for reconsideration is an objection to these costs. The Board notes that no objection to docket B costs was filed by the City of Rochelle.

Disposal objects to \$396.00 of the Board's costs which were incurred for the hiring of a shorthand reporter and preparation and delivery to the Board of a hearing transcript. Disposal argues in its motion that because it paid for its own copy of the transcript that it should not be required to pay for the Board's copy. (Mot. at 7.) The Board is required to base its decision on a transcribed record and Disposal's access to a transcript is not relevant to the Board's own needs.

Additionally, Disposal seems to believe that because the Board requires 7 copies of the transcript that the costs include those seven copies. (Mot. at 7.) The \$396.00 incurred by the Board was the total cost of hiring a court reporter and receiving one copy of the transcript. It is the Board's practice to make the additional six copies of the transcripts in AC cases at the Board offices. The additional amount of \$343.37 in hearing costs to the Board resulted from the costs of hiring a hearing officer for the hearing in this matter.

The Board finds that the Clerk's statement of costs totaling \$739.37 accurately reflects the hearing costs incurred by the Board. Therefore, the total hearing costs of \$739.37 as are assessed against the respondents, Rochelle Disposal and the City of Rochelle.

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

ORDER

1) It is hereby ordered that within 30 days of the date of this order, the City of Rochelle and Rochelle Disposal Inc. shall, by certified check or money order payable to the State of Illinois and designated for deposit in the General Revenue Fund, pay as compensation for hearing costs incurred by the Board, the amount of \$739.37 which is to be sent to :

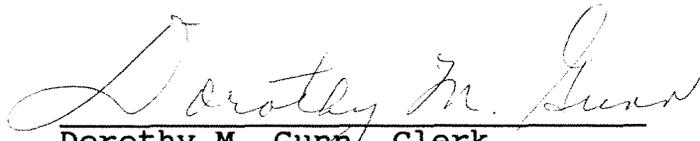
Illinois Environmental Protection Agency
Fiscal Services Division
2200 Churchill Road
Springfield, IL 62706

2) Docket B is hereby closed.

IT IS SO ORDERED.

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. (But see also 35 Ill. Adm. Code 101.246, Motions for Reconsideration, and Castenada v. Illinois Human Rights Commission (1989), 132 Ill. 2d 304, 547 N.E.2d 437 and Strube v. Illinois Pollution Control Board, No. 3-92-0468, slip op. at 4-5 (3d Dist. March 15, 1993).)

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 8th day of April, 1993, by a vote of 6-0.


 Dorothy M. Gunn, Clerk
 Illinois Pollution Control Board