

ILLINOIS POLLUTION CONTROL BOARD
May 20, 1993

COUNTY OF OGLE,)	
)	
Petitioner,)	
)	
v.)	AC 92-26
)	Docket A & B
ROCHELLE DISPOSAL SERVICE,)	(Administrative Citation)
INC., and CITY OF ROCHELLE,,)	
ILLINOIS,)	
)	
Respondent.)	

OPINION AND ORDER OF THE BOARD (by G. T. Girard):

This matter is before the Board on an administrative citation (AC) filed by the County of Ogle pursuant to the Environmental Protection Act. (415 ILCS 5/1 et seq. (1992).) The citation was filed on April 2, 1992, and alleges that respondents, Rochelle Disposal Service (Rochelle Disposal) and the City of Rochelle (Rochelle) violated Section 21(o)(12) of the Act by conducting a sanitary landfill operation in a manner which resulted in a failure to collect and contain litter from the site by the end of each operating day.

Both respondents filed a petition for review with the Board; Rochelle on May 4, 1992, and Rochelle Disposal on April 15, 1992. A hearing was held on February 11, 1993, in the Ogle County Courthouse, Oregon, Illinois at which no members of the public were present. Rochelle Disposal submitted a brief on March 15, 1993, and no other briefs were filed in the proceeding.

PROCEDURAL HISTORY

On June 4, 1992, the Board entered an order which ruled on several motions before the Board. (See County of Ogle v. Rochelle Disposal Service Inc., and City of Rochelle, AC 92-26, (June 4, 1992) (cited as 6/4/92 ord. at).) Specifically, the order granted a motion to amend the caption, and denied motions to dismiss and motions for summary judgement filed by respondents.

At hearing on February 11, 1993, the Hearing Officer granted a motion to amend the "factual part of the complaint" so that the date listed as January 29, 1991, in the inspection reports is amended to read January 29, 1992. (Tr. at 5-6.)

BACKGROUND

Rochelle owns a facility located in the County of Ogle

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referred to as Rochelle Municipal #2 Landfill (landfill) and Rochelle Disposal contracts to operate the facility. (Tr. at 86.) The facility is permitted by the Illinois Environmental Protection Agency as a sanitary landfill in the State of Illinois.

Rochelle maintains the scales at the facility and handles all billing of gate receipts. (Tr. at 88.) Rochelle Disposal, under the provisions of the contract, performs certain duties which include the operation and maintenance of the landfill. (Tr. at 103.)

On January 29, 1992, Stephan Rypkema of the Ogle County Health Department conducted an inspection of the landfill. Mr. Rypkema stated that he had been to the landfill approximately 20 times and tries to visit the landfill on a monthly basis. (Tr. at 12.) Mr. Rypkema indicated that prior to beginning his inspection he notified the scale operator of his presence and established that there had been no waste received that morning, (Tr. at 19 and 21.) Mr. Rypkema stated on this visit that he observed and photographed "quite a lot of blown litter scattered all along the southern bank" of the landfill in an area that is approximately 50 by 800 feet. (Narrative inspection report at 1; Tr. at 21.) On the basis of Mr. Rypkema's inspection an administrative citation was issued.

STATUTORY FRAMEWORK

Section 21(o)(12) of the Act provides that:

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:

* * *

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

Section 31.1(d)(2) provides, in pertinent part, that:

If, based on the record, the Board finds that the alleged violation occurred, it shall adopt a final order which shall include the administrative citation and findings of violation as alleged in the citation, and shall impose the penalty specified in subdivision (b)(4) of Section 42. However, if the Board finds that the person appealing the citation has shown that the violation resulted from uncontrollable circumstances,

the Board shall adopt a final order which makes no finding of violation and which imposes no penalty.

DISCUSSION

Rochelle Disposal presents three arguments in support of its position that the administrative citation was improperly issued. The three arguments are that: 1) the evidence at the hearing did not demonstrate that Rochelle Disposal allowed litter to accumulate, 2) the facts leading to the issuance of the citation were due to uncontrollable circumstances, and 3) that Rochelle Disposal is not "subject to enforcement proceedings under the Environmental Protection Act". (Resp. Br. at 1-5.)

First the Board notes that the argument that Rochelle Disposal is not subject to enforcement proceedings under the Act has already been adequately addressed in the Board's June 4, 1992 order. However, the Board will reiterate that the Act clearly 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". (6/4/92 ord. at 2.) Mr. Clyde Gelderloos, president of Rochelle Disposal, testified that except for operation of the scales Rochelle Disposal is "contracted to provide" a big part of the operation and maintenance of the landfill. (Tr. at 103.) Thus, Rochelle Disposal does have responsibilities at the site which would include picking up litter. The Act clearly is enforceable against any person who violates the Act and Rochelle Disposal is no exception. Therefore, the Board finds that the Act is enforceable against Rochelle Disposal.

Rochelle Disposal also argues that the evidence at hearing did not demonstrate that Rochelle Disposal allowed litter to accumulate. The Board disagrees. Mr. Rypkema stated at hearing that he established that no waste had been received on the morning of his inspection prior to his arrival. (Tr. at 19 and 21.) Therefore, any litter accumulated on site upon his arrival would have by necessity been from at least the previous day. Further, Mr. Gelderloos admitted that litter remained on the site due to weather conditions. (Tr. at 94-97.) Also, the photographs clearly show litter on site at the facility. (Exh. 2.) Thus, the Board finds that Rochelle disposal "caused or allowed" litter to accumulate in violation of Section 21(o)(12) of the Act.

Uncontrollable Circumstances

Having found a violation the Board will examine the argument put forward by Rochelle Disposal that the litter accumulation was due to uncontrollable circumstances. Rochelle Disposal argues

that the weather prevented Rochelle Disposal from picking up the litter and that the employees hired to remove litter had been ill the day prior to inspection. With regards to the weather, Rochelle maintains:

Both parties conceded at hearing that there had been a snowstorm some days prior to the date of the inspection, and that the temperature remained predominately below freezing between the date of the snowstorm and the date of the inspection. (R. 94). The snowstorm which covered litter at the site obviously made it impossible to remove the litter - one simply cannot remove what one cannot see. Thereafter, litter was removable only as nature allowed, i.e. only as snow either evaporated or melted, thus releasing the litter and making it available for pickup. The evidence demonstrates that, in fact, had been done by Rochelle Disposal Service, Inc., because the only place that had litter remaining was where the litter was frozen to the ground; the remainder of the area was litter free.

(Res. Br. at 3.)

Although the Board has previously held that weather conditions can result in circumstances where the occurrence of litter is uncontrollable, that is not the case here. (See St. Clair County v. J & R Landfill, Inc., 111 PCB 143, AC 89-18 (May 10, 1990.)) In this case, the testimony of Mr. Gelderloos indicated that not all litter was frozen to the ground. (Tr. at 106-108.) Specifically, Mr. Gelderloos states that in Exhibit 2-E some of the litter is loose. He further states that there was 18 inches of snow on the ground in the area. (Tr. at 107.) Thus, by respondents's own admissions some of the litter was not frozen to the ground. Further, an examination of the photographs submitted into evidence also clearly establishes that not all the litter was frozen to the ground. Therefore, the Board finds that the weather did not result in uncontrollable circumstances in this case.

Rochelle Disposal also argues that the illness of the "litter pickers" contributed to the accumulation of litter. The Board is not persuaded that illness of employee(s) is an uncontrollable circumstance in this case. Mr. Gelderloos testified that in the past temporary workers had been hired to assist in the picking up of litter. (Tr. at 97-98.) No evidence as to why such temporary help was not called in was presented. Therefore, the Board finds that the accumulation of litter was not due to uncontrollable circumstances and the citation was

properly issued.

Rochelle Disposal also cites to several court cases in support of its position that no penalty should be imposed. First Rochelle Disposal states "imposition of penalties under the Act is not to be invoked for punishment, but to aid enforcement of the Act" (citing Harris-Hub Co. v. Pollution Control Board, 50 Ill.App.3d 608, 8 Ill.Dec. 685, 365 N.E.2d 1071 1977).) (Res. Br. at 3-4.) Then Rochelle Disposal states:

In determining whether a penalty should be assessed, the Board should take into account such factors as the evidence of good faith on the part of Rochelle Disposal in addressing the problem, whether there was evidence of a continuing disregard for the requirements and procedures designed to protect the environment, whether Rochelle Disposal Service, Inc. has incurred any expense in addressing the situation and whether there was evidence introduced that the violation, if any, was intentional. (Citing Archer Daniels Midland v. Pollution Control Board, 149 Ill.App.3d 301, 102 Ill.Dec. 687, 500 N.E.2d 580 (1986) and Wasteland, Inc. v. Pollution Control Board, 118 Ill.App.3d 1041, 75 Ill.Dec. 143, 456 N.E.2d 964 (1983).)

(Res. Br. at 4.)

The Board notes that the cases cited by Rochelle Disposal are cases brought pursuant to the regular enforcement provisions contained in Section 31 of the Act. However, the instant matter was brought under the administrative citation provisions of Section 21 of the Act. The Act is quite clear that violation of Section 21(o)(12) of the Act will result in a \$500 fine. The Board has no authority to mitigate such a fine. (See, IEPA v. Jack Wright, August 30, 1990, AC 89-227, 114 PCB 863 and IEPA v. Dennis Grubaugh, October 16, 1992, AC 92-3, 136 PCB 425.)

CONCLUSION

The Board finds that Rochelle Disposal violated Section 21(o)(12) of the Act and that such violation did not occur as a result of uncontrollable circumstances.

ORDER

1. Respondent is hereby found to have been in violation on January 29, 1992, of 415 ILCS 5/21(o)(12) (1992).
2. Within 30 days of the date of this order, respondent

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shall, by certified check or money order, pay a civil penalty in the amount of \$500 payable to the Ogle County Treasurer. Such payment shall be sent to:

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

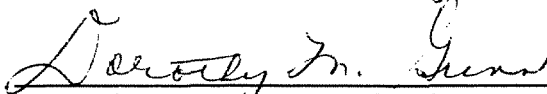
Respondent shall include the remittance form and write the case name and number and their social security or federal employer identification number on the certified check or money order.

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 of 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 upon Rochelle Disposal. 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 Rochelle Disposal. Such filings shall be entered in Docket B of this matter.
5. Respondent is 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

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above opinion and order was adopted on the 20th day of May, 1993, by a vote of 6-0.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board

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