

COUNTY OF OGLE,)
)
 Complainant,)
)
 v.)
)
 ROCHELLE DISPOSAL SERVICE,)
 INC., and CITY OF ROCHELLE,)
 ILLINOIS,)
)
 Respondents.)

AC 91-45
Dockets A & B
(County No. 91-R-1003)
(Administrative Citation)

MR. DENNIS SCHUMACHER, STATE'S ATTORNEY AND MS. ROBBIN STUCKERT, ASSISTANT STATE'S ATTORNEYS OF OGLE COUNTY, APPEARED ON BEHALF OF THE PETITIONER;

MR. JORDAN GALLAGHER OF GALLAGHER, KLEIN, AND BRADY, APPEARED ON BEHALF OF ROCHELLE DISPOSAL SERVICES, INC.; AND

MR. DENNIS HEWITT APPEARED ON BEHALF OF THE CITY OF ROCHELLE.

OPINION AND 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 was filed pursuant to Section 31.1 of the Illinois Environmental Protection Act (Act). The authority to issue ACs was delegated to the County pursuant to Section 4(r) of the Act. (Ill. Rev. Stat. 1991, ch. 111 1/2, par. 1031.1 and 1004(r).) The AC charges Rochelle Disposal Services (Rochelle Disposal) and the City of Rochelle (City) with violation of Section 21(o)(5).¹ Both respondents filed a petition for review on October 11, 1991. Hearing was held in this matter on April 29, 1992. On June 4, 1992 the Board issued an order denying Rochelle Disposal's motion to be dismissed as a party to this action. In addition, the June 4, 1992 Board order denied Rochelle Disposal's motion for summary judgment.

BACKGROUND

The respondents are charged with lack of daily cover in

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.

0138-0343

violation of section 21(o)(5) of the Act. The landfill at which the alleged violation occurred is owned by the City. Disposal operates the landfill under a contract between it and the City. The alleged violation took place on August 2, 1991. Ogle County alleges that the inspector, Mr. Steve Rypkema, arrived at Rochelle Municipal Landfill 2 for a regular inspection at 6:58 A.M. and found a lack of daily cover. In the AC, the County charged the respondents with only one violation and therefore assessed a penalty of \$500.00 as provided for in Section 42(b)(4) of the Act.

ISSUE

At hearing, Mr. Rypkema testified that when he arrived at the landfill site at 6:58 a.m., he found approximately 60-120 feet of garbage uncovered in the "Daily Fill Area". (Tr. at 10, 17, and 29.) Several photographs were taken by Mr. Rypkema at the site and were entered into evidence. (Comp. Group Exh. 4.) The photographs show piled garbage with what Mr. Rypkema described at hearing as small patches of cover. (Comp. Group Exh. 4 at 12.6, 12.7, 12.8, 12.9, 12.10, 12.11, and 12.12.) Mr. Rypkema stated that when he was driving down to the area in question, he saw a bulldozer in the shed and it followed him down to the area. (Tr. at 45 and 46.)

Mr. Rypkema also testified that when he was at the site, he spoke with Mr. String who was filling in for the regular gate operator, Mrs. Bearrows.² (Tr. at 11.) Mr. Rypkema testified that Mr. String told him that the first garbage load to arrive on the day in question was the truck which arrived when Mr. Rypkema was already at the site. (Tr. at 19 and 36.) Mr. Rypkema also testified that at approximately 7:30 a.m. Mr. Clyde Gelderloos, the President of Rochelle Disposal Services Incorporated, arrived at the site. (Tr. at 37.) Mr. Rypkema testified that he asked Mr. Gelderloos about the uncovered garbage and said that it appeared that they were covering weekly instead of daily. (Tr. at 38.) According to Mr. Rypkema, Mr. Gelderloos did not respond to the allegation. (Tr. at 38.)

Mr. Rypkema went on to testify that it would be normal for a landfill operator to remove the soil cover from the night before in order to receive more refuse. (Tr. at 44 and 45.) Mr. Rypkema testified that during prior inspections, he could not remember a time when the daily cover was removed prior to his 7:00 a.m. inspection. (Tr. at 47 and 49.) However, he did testify that in the past he had seen the operators remove the cover. (Tr. at 49.) When this occurred, the covering was pushed to the side of the work area or on top of the working face. (Tr.

²No first name appears in the record for either Mr. String or Mrs. Bearrows.

at 49.) Mr. Rypkema went on to explain that he could tell that the area had not recently been scraped because there was no soil piled up around the working area. (Tr. at 49.) In addition, he testified that the area depicted in the photo marked 12.6 could not have been covered because if the cover had been removed, more soil would be mixed in with the garbage. (Tr. at 120.)

At hearing, Mr. Gelderloos testified for the respondents. He stated that he did not observe the area in question until after solid waste had already been received that day. (Tr. at 55.) However, he testified that it was his opinion that the area was properly covered the night before but that it was uncovered early on the morning in question to receive waste for the coming day. (Tr. at 58.) Mr. Gelderloos testified that Mr. Ray Hartman, the operator responsible for covering the site, normally arrives at work between 5:30 a.m. and 6. (Tr. at 59.) On the day in question, Mr. Hartman's time card showed him as being at work at 6. (Tr. at 59 and Resp. Exh. 1.) Mr. Gelderloos testified that normally, the daily cover would be removed and placed off to one side or on the side of the downhill slope toward the barrow pit; however, Mr. Gelderloos did not notice where the cover was placed on the day in question. (Tr. at 60 and 61).

Mr. Ray Hartman also testified for the respondents at hearing. Mr. Hartman stated that he likes to normally leave the shed area by 6:15 a.m. to go remove the daily cover. (Tr. at 74.) He stated that there is no normal time he removes the cover but that it must be done before the first truck arrives with solid waste. (Tr. at 75.) Mr. Hartman testified that on August 1, 1991, he covered the area before he left work. (Tr. at 78.)

Mr. Hartman testified that on August 2, 1991, he got to work at 6:00 a.m. and went down to the pit in the bulldozer to remove the cover. (Tr. at 80.) However, he ended up having to go back to the repair shop because of a leak in one of the hoses. (Tr. at 80 and Resp. Exh. 2.) In contrast to Mr. Rypkema's allegations, Mr. Hartman testified that he had removed the cover from the area before he went back to the repair shop. (Tr. at 80.) Mr. Hartman also testified that it normally takes him twenty to twenty-five minutes to remove the cover and that it took him five or six minutes to fix the hose. Thus, he returned to the daily fill area in the bulldozer at about 7:00. (Tr. at 82 and 83.)

Finally, Mr. Hartman testified that he could not remember where he piled the covering on the day in question. (Tr. at 102.) Mr. Hartman, when looking at complainant's group exhibit 4, photographs 12.5 and 12.11 could not identify where the daily cover had been piled. (Tr. at 102 and 103.) Mr. Hartman testified that it would be hard to tell from the pictures where the daily cover material had been stacked because it mixes with

0138-0345

the garbage and does not look like a pile of soil when removed. (Tr. at 104.) Instead, he testified it would look like piles of garbage. (Tr. at 104.)

DISCUSSION

In its AC, the County charged the respondents with a violation of Section 21(o)(5). (AC at 1.) Section 21(0)(5) prohibits any person from conducting a sanitary landfill which is required to have a permit, in such a manner as to leave uncovered waste remaining from a previous operating day or at the conclusion of an operating day unless the facility's permit so allows.

The Respondents are permitted pursuant to Section 21(d) of the Act. The operating permit issued to the City of Rochelle does not allow for uncovered refuse at the end of an operating day. In fact, the permit specifically states in the Standard Conditions section that "waste must be compacted in layers and covered daily with six inches of suitable material." (Comp. Exh. 2 at 3.) Therefore, the sole issue is whether or not daily cover was applied.

In the case at hand, there was extensive testimony from each side regarding the issue of cover. Mr. Hartman testified that he had removed the cover to begin receiving new waste, and Mr. Rypkema testified that in his opinion no cover was ever applied to the area in question. The photographs taken during the inspection and entered as Complainant's Group Exhibit 4 show a large pile of un-compacted garbage with little or no soil coverage. It is obvious from the photographs that very little, if any, dirt is mixed in with the garbage at the site.

Additionally, both Mr. Hartman and Mr. Gelderloos testified that when the daily cover is removed, a pile of dirt with garbage mixed in is created. However, Mr. Hartman was unable to explain where the piles of daily cover were placed on the day in question and no piles were shown in the photographs. In addition, Mr. Gelderloos testified that he could not remember where the pile of daily cover was located on the day of the alleged violation.

The Board, after careful consideration, is persuaded by Mr. Rypkema's testimony and the photographs taken at the inspection which corroborate Mr. Rypkema's testimony. The Board believes that if daily cover had been applied and later removed that the garbage shown in the photographs would be more compacted and dirt would be mixed throughout. Additionally, the pile of dirt from the removal should have been visible.

For the reasons stated in the above opinion, the Board finds that the respondents, the City of Rochelle and Rochelle Disposal Inc., have violated Section 21(o)(5) of the Act. Accordingly,

0138-0346

the respondents are jointly and severably liable for a penalty of \$500.00.

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 Ill. Rev. Stat. 1991, ch. 111 1/2, par. 21(o)(5).
2. Within 30 days of this order, the respondents shall pay the sum of five hundred dollars (\$500.00) 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, (Ill. Rev. Stat. 1991, ch. 120, par. 10-1003), 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.

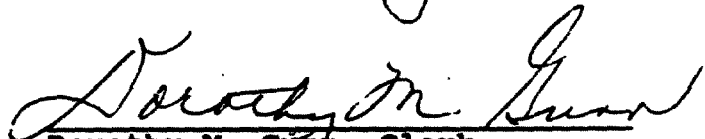
0138-0347

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.

Section 41 of the Environmental Protection Act (Ill.Rev.Stat. 1991, Ch 111 1/2, par. 1041) 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.)

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above opinion and order was adopted on the 7th day of January, 1993, by a vote of 3-0.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board