

ILLINOIS POLLUTION CONTROL BOARD
December 15, 1988

IN THE MATTER:)
BI-STATE DISPOSAL, INC.) AC 88-33
) Docket A
Respondent.)
)

JAY HOFFMAN, ESQ., ASSISTANT STATE'S ATTORNEY FOR ST. CLAIR COUNTY, APPEARED ON BEHALF OF THE COMPLAINANTS, COUNTY OF ST. CLAIR

THOMAS IMMEL, ESQ. OF IMMEL, ZELLE, OGREN, MCCLAIN, GERMERAAD AND COSTELLO, APPEARED ON BEHALF OF THE RESPONDENTS, BI-STATE DISPOSAL, INC.

OPINION AND ORDER OF THE BOARD: (by M. Nardulli):

This matter comes before the Board upon a May 5, 1988 filing of an Administrative Citation by the State's Attorney of St. Clair County (hereinafter "St. Clair County") and an June 8, 1988 filing of a Petition for Review filed by the Respondent. Both filings are pursuant to Ill. Rev. Stat. 1986 Supp. ch. 111^{1/2}, par. 1031.1 of the Illinois Environmental Protection Act (hereinafter "Act").

Hearing was held in this matter on September 8, 1988 in Belleville, St. Clair County. Three members of the public, who were potential witnesses for St. Clair County, were present at the meeting (R. at 9). However, neither side called any witnesses at the meeting. Instead, St. Clair County requested leave to amend the Administrative Citation (R. at 4). The hearing officer granted leave to amend the citation pursuant to his authority under Section 35 Ill. Adm. Code Subtitle A Section 103.200 (R. at 7-8). As a result of the agreed to amendments to the citation, the Respondent consented to entry of an order on the remaining counts against the Respondent (R. at 7). No reply briefs were filed by the parties.

Based on the agreement between the parties, the Board accepts the amendments to the Administrative Citation and the Respondent's consent to entry of an order by the Board finding for St. Clair County and against Bi-State Disposal, Inc. on the remaining counts in the complaint. The Board finds that St. Clair County's determination of violations by operating the landfill in a manner which resulted in uncovered refuse from a previous operating day on March 28, April 1, April 3 and April 6, 1988, pursuant to Ill. Rev. Stat. 1987, Supp., ch. 111^{1/2}, par.

1021(p)(5) and the requirement to collect and contain litter at the end of a previous operating day on April 8, 1988 and March 28, 1988 pursuant to par. 1021(p)(12) was correct and hereby upholds the determination of violations.

BACKGROUND

The Respondent is a Missouri corporation operating a sanitary landfill in the County of St. Clair under Illinois Environmental Protection Agency Operating Permit Number 1976-39-Op. On March 28, April 1, April 3, April 6, and April 8, 1988, Donald R. Brannon, of the County of St. Clair, inspected the landfill facility. On the basis of the inspections, St. Clair County determined that the Respondent was responsible for the following violations:

- A) On March 28, 1988, operated said landfill in a manner which resulted in uncovered refuse remaining from any previous operating day or at the conclusion of any operating day, in violation of Ill. Rev. Stat. 1986, Supp., ch. 111 $\frac{1}{2}$, par. 1021(p)(5).
- B) On March 28, 1988, operated said landfill facility in a manner which resulted in failure to collect and contain litter from the site by the end of a previous operating day, in violation of Ill. Rev. Stat. 1986, ch. 111 $\frac{1}{2}$, par. 1021(p)(12).
- C) On April 1, 1988, operated said landfill in a manner which resulted in uncovered refuse remaining from any previous operating day or at the conclusion of any operating day, in violation of Ill. Rev. Stat. 1986, Supp., ch. 111 $\frac{1}{2}$, par. 1021(p)(5).
- D) On April 3, 1988, operated said landfill in a manner which resulted in uncovered refuse remaining from any previous operating day or at the conclusion of any operating day, in violation of Ill. Rev. Stat. 1986, Supp., ch. 111 $\frac{1}{2}$, par. 1021(p)(5).
- E) On April 6, 1988, operated said landfill in a manner which resulted in uncovered refuse remaining from any previous operating day or at the conclusion of any operating day, in violation of Ill. Rev.

Stat. 1986, Supp., ch. 111 $\frac{1}{2}$ par. 1021(p)(5).

- F) On April 8, 1988, operated said landfill in a manner which resulted in failure to collect and contain litter from the site by the end of a previous operating day, in violation of Ill. Rev. Stat. 1987, Supp., ch. 111 $\frac{1}{2}$ par. 1021(p)(12).

DETERMINATION OF VIOLATIONS

At hearing, Bi-State Disposal consented to entry of an order by the Board finding that the aforementioned violations did occur and that the Respondent was responsible for the violations (R. at 7). Further, there is no claim by the Respondent that the violations were the result of uncontrollable circumstances that would excuse the violations under par. 1031.1(d)(2) of the Act. The Board accepts the Respondents consent and finds that the violations did occur as alleged by St. Clair County.

PENALTIES

Penalties in Administrative Citation actions of the type are prescribed by Section 42(b)(4) of the Act, to wit:

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 and of this Act shall pay a civil penalty of \$500 for each violation of 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; except that if a unit of local government issued the administrative citation, 50% of the civil penalty shall be payable to the unit of local government.

Respondent will therefore be ordered to pay a civil penalty of \$3,000, based on the six violations as herein found. For purposed of review, today's action (Docket A) constitutes the Board's final action on the matter of the civil penalty.

Respondent is also required to pay hearing costs incurred by

the Board and St. Clair County. The Clerk of the Board and St. Clair County will therefore be ordered to each file a statement of costs, supported by affidavit, with the Board and with service upon Respondent. 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 findings of fact and conclusion of law in this matter.

ORDER

- 1) Respondent is hereby found in violation, as alleged of Ill. Rev. Stat. 1986, Supp., Ch. 111¹/₂, par. 1021(p)(6) and 1021(p)(12).
- 2) Within 45 days of this Order of December 15, 1988, Respondent shall, by certified check or money order, pay a civil penalty in the amount of \$1500.00 payable to the Environmental Protection Trust Fund. Such payment shall be sent to:

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

- 3) Within 45 days of this Order of December 15, 1988, Respondent shall, by certified check or money order, pay a civil penalty in the amount of \$1500.00 payable to St. Clair County Landfill Citation Fund. Such payment shall be sent to:

Mr. Paul Haas
County Collector
#10 Public Square
Belleville, IL 62220

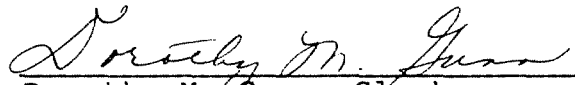
- 4) Docket A in this matter is hereby closed.
- 5) Within 30 days of this Order of December 15, 1988, the State's Attorney of St. Clair County shall file a statement of its hearings costs, supported by affidavit, with the Board and with service upon Respondent. Within the same 30 days, the Clerk of the Pollution Control Board shall file a statement of the Board's costs, supported by affidavit and with service upon Respondent. Such filings shall be entered in Docket B of this matter.

- 6) Respondent is hereby given leave to file a reply/objection to the filings as ordered in 4) within 45 days of this Order of December 15, 1988.

Section 41 of the Environmental Protection Act, Ill. Rev. Stat. 1985, ch. 111^{1/2}, par. 1041, provides for appeal of Final Orders of the Board within 35 days of the issuance of Final Orders. The Rules of the Supreme Court of Illinois establish filing requirements.

IT 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 15th day of December, 1988, by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board