ILLINOIS POLLUTION CONTROL BOARD
November 21, 1984

CITIZENS AGAINST HAMPTON TOWNSHIP LANDFILL,	)	
Complainant,	)	
v.	)	PCB 81-155
DAVID R. BLEDSOE, DAN LIGINO, STEVEN LIGINO, and UPPER ROCK ISLAND COUNTY LANDFILL, INC.	)	
Respondents.	)	

MR. JEFFREY C. FORT AND MS. CAROL L. DORGE OF MARTIN, CRAIG, CHESTER & SONNENSCHEIN APPEARED ON BEHALF OF THE COMPLAINANT: AND

MR. FRED C. PRILLAMAN OF MOHAN, ALEWELT & PRILLAMAN AND MR. ROBERT J. NOE OF BOZEMAN, NEIGHBOUR, PATTON & NOE APPEARED ON BEHALF OF THE RESPONDENTS.

OPINION AND ORDER OF THE BOARD (by J. Marlin):

This matter comes before the Board upon a July 13, 1981 complaint brought by Citizens Against Hampton Township Landfill (Citizens) in PCB 81-112. On July 23, 1981, the Board entered an Order dismissing the complaint in 81-112 (43 PCB 95). On August 10, 1981, Citizens filed a Motion for Reconsideration of the Board's July 23, 1981 Order. An objection to that motion was filed by the Illinois Environmental Protection Agency (Agency) on August 19, 1981. Citizens filed a Motion for Leave to File an Amended Complaint and an Amended Complaint on September 25, 1981. A Response in Opposition to the Motion for Leave to Amend was filed by the Agency on October 8, 1981.

The Board entered an Order which granted Citizens' Motion for Reconsideration and which modified some language of the July 23, 1981 Order (43 PCB 457; October 8, 1981). However, since PCB 81-112 had been previously dismissed in its entirety, the Board's Order of October 8, 1981 denied Citizens' Motion for Leave to File an Amended Complaint. Instead, the Amended Complaint was treated as a new case and docketed as PCB 81-155.

On October 22, 1981, the Board entered an Order in PCB 81-155 which granted Citizens' Motion to Consolidate and thereby incorporated the record in PCB 81-112 into the record of PCB 81-155 (43 PCB 573). Since the first six counts of the Complaint in PCB 81-155 were identical to the Complaint in PCB 81-112, the Board dismissed Counts I through VI of the Complaint in PCB 81-155 while retaining Counts VII and VIII. Additionally, because the

Agency was not alleged to have violated any Board rules or the Illinois Enviornmental Protection Act (Act), except perhaps in its permitting capacity which the Board has no authority to consider, the Agency was dismissed as a Respondent.

On November 9, 1981, Respondent Bledsoe filed a Motion for an Extension of Time in which to plead in this matter. The Board entered an Order which granted Bledsoe's motion (44 PCB 109, November 19, 1981). On November 20, 1981, Respondent Bledsoe filed his Answer and a Motion to Strike portions of the Amended Complaint. The Board entered an Order denying Respondent Bledsoe's Motion to Strike (45 PCB 185, December 3, 1981).

After numerous motions were filed and extensive discovery occurred, the Complainant filed a Motion for Leave to File a Second Amended Complaint and a Second Amended Complaint on July 2, 1982. On July 13, 1982, the Respondents filed an Objection. On July 15, 1982, the Hearing Officer entered an Order which granted Citizens leave to file its Second Amended Complaint.

On August 11, 1982, Respondents Bledsoe and Upper Rock Island County Landfill, Inc. filed their Answer to the Second Amended Complaint and a Motion to Strike certain specified portions of that Complaint. Citizens filed its Response on August 16, 1982.

Counts I through VI have previously been dismissed by the Board (43 PCB 95, July 23, 1981, PCB 81-112); (43 PCB 573, October 22, 1981, PCB 81-155). Since these same counts have been included in the second amended complaint before the Board and the Respondents have moved that the counts be stricken, the Board will again strike Counts I through VI. The reasons have been enunciated by the Illinois Supreme Court in Landfill, Inc. v. IPCB, et al., 74 Ill. 2d 541, 387 N.E.2d 258 (1978). The Court stated that the Board has no authority to hear a third party challenge to an Agency permit grant. Id., slip. op. at 8. The Court has held that an enforcement proceeding is the "statutorily established check upon activities conducted after the Agency has allowed the permit." Id.I, slip op. at 10. Herein, Citizens seems to have misinterpreted Landfill. The Court was concerned about Board usurpation of the Agency permitting function, but also recognized the right of any person to file an enforcement proceeding alleging that one has caused, threatened or allowed pollution. By its repeated requests to the Board for a ruling on Counts I through VI, Citizens essentially requests that the Board usurp the Agency permitting function in this enforcement proceeding. The Board declines to do so. The Board notes that alleged violations from activities conducted before the permit issuance are also not subject to Board decision in this enforcement proceeding because of a similar threat of usurpation. Landfill, slip op. at 10.

The Board denies the above motion regarding Counts VII, VIII, IX, X, XI, XII, XIII, and XIV because they are sufficiently detailed to state an appropriate cause of action. The Board will

strike the general reference to violations of the Act and Board's regulations, but finds that Count VII alleges, in effect, violations of Sections 12(a) and 12(d) of the Act with sufficient specificity to allow the count to stand.

Respondents' motion to strike the allegations appearing in paragraphs 19 and 20 of Count VIII pertaining to permit condition violations and "traffic to and from the site disturbs the residential character of adjacent areas through which vehicles pass" is denied. The allegations are sufficient to inform the Respondents as to the violations alleged.

Respondents' motion to strike is granted as to the allegations appearing in paragraph 23 of Count XI as to "depreciation in property value" and that third parties are "allowed to cause noise pollution". The reference to "substantial depreciation in property value" is not reasonably related to the allegation of noise pollution. The reference to "trucks which are owned by defendants" is proper pleading in alleging noise pollution but the reference to trucks "which are carrying waste to the site" is improper. Respondents have no control over noise from trucks of third parties.

Respondents' motion to strike allegations in paragraph 20 of Count XII that third parties "have caused culverts to sink and caused standing water on plaintiffs' property" is granted. The principal issue is whether the Respondents, not third parties, allowed improper surface drainage to cause adverse effects on adjacent property owners. The Respondents have no control over third party truck load limits or road load limits of offsite roads.

On October 12, 1982, Citizens filed its Motion for Leave to File its Brief Instanter and its Memorandum of Law and Facts Adduced at Hearing. On November 1, 1982, the Respondents filed a Motion for Extension of Time in which to file their response brief, subsequently filed on November 15, 1982.

The Respondents filed a Motion to Supplement the Record, a Motion for Assessment of Expenses, and a Summary of Respondents' Pending Motions on November 19, 1982. Eleven days later Citizens filed a Motion for Leave to File Instanter its Response and Objection to Respondents' Motion for Assessment of Expenses; its Response to the Motion to Strike (i.e., its Response to numerous motions to strike contained in Respondents' Brief); and its Response to Respondents' Motion to Supplement the Record.

On December 6, 1982, Citizens filed a Motion for Leave to File its Reply Brief Instanter and the Reply Brief of the Complainants. On December 27, 1982, the Respondents' Response to Complainant's Motion for Leave to File Instanter was filed along with the Respondents' Motion for Leave to File their Response Instanter. On December 30, 1982, Citizens filed an Objection and Response to the Respondents' Motion for Leave to File Response Instanter.

The Board hereby grants all motions pertaining to slight delays in fulfilling the time requirements for filing motions, briefs, etc. that have not already been ruled upon by the Hearing Officer. Accordingly, the Board hereby grants Citizens' October 12, 1982 Motion for Leave to File Instanter its Response; Citizens' November 30, 1982 Motion for Leave to File Instanter its Response; and Citizens' December 6, 1982 Motion for Leave to file its Reply Brief Instanter. Similarly, the Board hereby grants the Respondents' November 1, 1982 Motion for Extension of Time in which to file their Response Brief; and Respondents' December 27, 1982 Motion for Leave to file their Response Instanter.

However, the Respondents' November 19, 1982 Motion for Assessment of Expenses is hereby denied as inappropriate. Respondent failed to timely object to Complainants' answers to its request to admit pursuant to 35 Ill. Adm. Code 103.162 (Old Rule 314(c), thereby waiving its right to object and to request expenses pursuant to 35 Ill. Adm. Code 107.101 (Old Rule 701). The Complainant's November 30, 1982 request to be awarded its costs in responding to that motion is also denied.

On Page 44 of the Respondent's November 15, 1982 brief, the Respondents moved to strike from the record the "opinion testimony" of Dr. Russell Campbell pertaining to chemical concentrations for lack of foundation and expertise. This motion was previously made during the hearing and denied by the hearing officer. The Board hereby affirms the hearing officer's ruling and denies the motion to strike.

The Respondents in their Brief moved to strike from complainant's Brief the following references: 1) to photographs not admitted into evidence (R.B. 65-6, C.B. 26); 2) "that a Polaroid camera distorts more than does a telescopic lens" (R.B. 72, C.B. 18, ftn. 13); 3) to depreciation of property values (R.B. 72-3, C.B. 29); 4) to the elimination of the utility of a gate leading to the Cabry property (R.B. 85, C.B. 35); and 5) to the covering operations at the landfill after the close of the hearing (R.B. 85-6, C.B. 35). The motion to strike is granted as to #1, 2, 3, 4 and 5 as these are references to facts not in the record. The Board on its own motion hereby strikes the references as to #4 in the complainant's reply brief (C.R.B. 25).

In their Motion to Supplement Record, the Respondents have attempted to prove their contention that the initiation of this case by the complainants may have been motivated not solely by a genuine concern about threatened water pollution and imply that these proceedings may have been possibly instigated by another source such as a competitor. Exhibit A consists of a portion of the hearing transcript (R. 387-9) pertaining to a statement by William R. Glendon. It is based on hearsay and was properly excluded by the hearing officer. Exhibit C consists of documents which purportedly indicate the existence of a financial interest in a competing landfill. (See: Respondents' Exhibit No. 25 for Identification and Exhibit B). The hearing officer correctly

excluded Exhibit C as an offer of proof at the hearing as without foundation and irrelevant. Accordingly, the Respondents' November 19, 1982 Motion to Supplement Record, which requested that the Board supplement the record by adding material comprising offers of proof in an attached Exhibit A and Exhibit C, is hereby denied.

BACKGROUND

The Complainant is an unincorporated association of homeowners, tenants, property owners, and other concerned citizens who are located near the Bledsoe landfill, which lies north of 20th Avenue North near Hampton, Rock Island County, Illinois.

Respondents Dan Ligino and Steven Ligino are the previous owners of 120 acres of the property in question. The Liginos deeded away their fee interests to David Russell Bledsoe and his wife Sandra Bledsoe by warranty deed dated January 19, 1982. Respondent David R. Bledsoe is a contractor and real estate developer who purchased the tract of property to develop it into a sanitary landfill. Mr. Bledsoe was born and raised in the vicinity of the subject property.

On July 7, 1980, Mr. Bledsoe filed an application for a Development Permit from the Agency (C. Exh. 23). This first permit application was rejected by the Agency via a letter dated September 17, 1980 (C. Exh. 23). The Agency, in rejecting this initial permit application, indicated that insufficient information pertaining to soil permeability was submitted (C. Exh. 27, 28). On November 25, 1980, Respondent Bledsoe resubmitted the permit application to the Agency indicating that additional borings had been taken in October, 1980, (C. Exh. 29).

A public hearing on the pending permit application was then held in Moline, Illinois on February 11, 1981 (R. 719). At that public hearing, 37 people testified, including members of Citizens who subsequently testified at the Pollution Control Board hearings (R. 723-4). On March 4, 1981, the Agency issued the development permit for the site.

The Respondents' landfill opened for business on August 31, 1981, after the development, operating and all the requisite supplemental permits and special waste permits were obtained. After operations had begun, Mr. Bledsoe transferred the property ownership to Respondent Upper Rock Island County Landfill, Inc. (URICL), a corporation incorporated under the laws of the State of Illinois on February 17, 1982. Mr. Bledsoe is the President of URICL and owns 50 percent of its stock while his wife owns the other 50 percent (R. 658-9).

The Respondents' landfill operations are conducted on 32 acres of land in the middle of a 140 acre piece of property. The property consists of a 48 acre north buffer zone, a 15 acre north trench fill area, a 17 acre south area fill, a 40 acre south borrow area, and a 20 acre south buffer zone. The landfill area

lies north of 20th Avenue North (Cook School Road) near Hampton, Illinois. To the north of the landfill is a wooded 48 acre buffer zone. Further north is a large public golf course. A 15 acre trench area is immediately south of the north buffer zone and a 17 acre area fill is next to, and immediately south of, the 15 acre trench fill area. To the south is the south buffer and borrow areas. The landfill is located in the east half of the northeast quarter of Section 21 and Lots 9 and 10 in the southeast quarter of Section 16 of Hampton Township (C. Gr. Exh. 7).

Immediately west of the Respondents' landfill is the City of East Moline's sanitary landfill which has been in operation since 1972 (R. 974). Access to both landfills is by way of a common north-south access road.

Immediately east of the 48 acre north buffer zone and the north trench area is property belonging to Herschel and Martha Cook, on which no one has lived since 1972 (R. 232). A 20-foot wide easement, or right-of-way, is south of the Cook property in order to provide access from 20th Avenue North. This right-of-way is located on the extreme eastern portion of the 17 acre area fill and the 40 acre south borrow area, abutting the western edge of the property owned by Nino and Savilla Cabry along the east section line of Section 21.

The Quad-Cities Downs Racetrack, which cannot be seen by the naked eye from Respondents' landfill, is about one mile southwest of the site. Scattered farmland, pastureland, and homes are also situated in the general vicinity of the property in question (R. 976-7, R. Gr. Exh. 24, R. Exh. 25).

COUNTS

The dismissal of Counts I through VI was discussed previously. The remaining counts are summarized below.

Count VII alleges that the Respondents have caused or threatened to cause water pollution, or that contaminants placed upon the land by them create a water pollution hazard, in violation of Respondents' permits and Sections 12(a) and 12(d) of the Act.

Count VIII alleges that (1) landfill operations are not concealed from public view; (2) a fence surrounding the landfill site has not been provided; (3) traffic to, and from, the site disturbs the residential character of adjacent areas through which vehicles pass; (4) roads are inadequate to allow orderly operations within the site; (5) insufficient depth of cover was placed on the site; and (6) inadequate measures were taken to properly monitor and control leachate, thereby violating certain conditions of Respondents' permit and 35 Ill. Adm. Code 807.305 and 807.314 (Old Rules 305 and 314 of Chapter 7).

Count IX alleges permit violations by Respondents which include (1) the lack of daily cover on 53 specified days between September 13, 1981 and June 3, 1982; (2) failure to adequately cover the site and/or covering the site with sludge, ash, or snow on some occasions; (3) leaving the working face of the landfill exposed after the cessation of operations; and (4) failure to control dust, litter, and vectors in violation of 35 Ill. Adm. Code 807. 302, 807.305 and 807.314 (Old Rules 302, 305, and 314 of Chapter 7).

Count X alleges that Respondents (1) have permitted blowing refuse to escape from the site and accumulate on adjoining property on 15 specified dates between November 8, 1981 and April 10, 1982 and (2) have engaged in or allowed open dumping of refuse on public highways on January 7, 19 and February 21, 22, 1982 in violation of permit conditions, 35 Ill. Adm. Code 807.302, 807.305 and 807.314 (Old Rules 302, 305 and 314 of Chapter 7) and Section 21 of the Act.

Count XI alleges that the Respondents violated the operating permit by not implementing the representations that were made in the permit application (incorporated into the permits). This includes (a) failing to follow a program to shield the site from view; (2) failing to plant rapidly growing trees and other vegetation along the east portion of the site; (3) failing to provide for visual and acoustic barriers for the landfill operation by not providing berms, vegetation or other sound muffling devices along the south and east portions of the property, in violation of 35 Ill. Adm. Code 807.314 (Old Rule 314 of Chapter 7).

Additionally, Count XI alleges that the Respondents violated the condition in their operating permit, which requires the minimization of equipment noise impacts on property adjacent to the site, by operating noisy equipment and allowing trucks which are owned by the Respondents, or which are carrying waste to the site, to cause noise pollution and unreasonably interfere with the rights of nearby property owners in violation of 35 Ill. Adm. Code 900.102 (Old Rule 102 of Chapter 8: Noise Regulations) and Section 24 of the Act.

Count XII alleges that the Respondents violated their operating permit (permit application is incorporated therein), specifically Condition No. 1, by allowing improper surface drainage to cause adverse effects on adjacent property owners due to ponding on site on June 23, 1982 and allowed sediments and debris to run off and to accumulate in roadside ditches on five specified dates between September 5, 1982 and April 28, 1982.

Count XIII alleges that Respondents allowed trucks to deposit refuse at the site after dusk and after operating hours on 9 dates between November 18, 1981 and February 3, 1982 when the landfill gate allegedly was improperly left open in violation of a condition in the Respondent's supplemental permit and 35 Ill. Adm. Code 807.302.

Count XIV alleges that the Respondents failed to install proper monitoring wells in order to detect groundwater pollution and failed to submit any quarterly water monitoring data to the Agency before June, 1982, despite the fact that some monitoring wells were installed as early as October, 1980, in violation of 35 Ill. Adm. Code 807.317 (Old Rule 317 of Chapter 7).

Extensive public hearings were held in Rock Island, Illinois on July 19, 20, 21 and 22, 1982 at which 22 witnesses testified, numerous exhibits were admitted into evidence, and many members of the public and the press were in attendance.

DISCUSSION

To prove a violation under Section 12(a) of the Act complainant must show by a proponderance of the evidence that respondent caused, threatened or allowed water pollution, Allaert Rendering, Inc. v. IPCB and IEPA, 91 Ill. App.3d 153, 414 N.E.2d 492 (3d Dist., 1980). The same standard controls under Section 12(d) to show that respondent deposited contaminants upon the land so as to create a water pollution hazard. Respondents argue that an even higher standard should control because Citizens asks not only for a permit revocation, but also for an injunction not only against the Respondents but also the Agency. This is not a proper forum for attempts to enjoin the Agency. Requests for injunctive relief are properly before the circuit court, not before the Board. Ill. Rev. Stat. 1983, ch. 111½, par. 1043. Notwithstanding, there is insufficient evidence in the record for even considering a shutdown of this facility.

In the permit process before the Agency, Respondents have already shown that the subject landfill is located, designed and developed so as not to cause or threaten to cause water pollution. With the above in mind, the Board turns to the evidence before it.

Count VII

Citizens attempts to prove the violations alleged in Count VII by introducing state records and testimony thereon, historical documents, testimony of four present and former area landowners, and the testimony of an expert who was qualified in coal mining and in judging the potential of water pollution from landfills (R. 504). These attempts to prove that the landfill causes or threatens to cause water pollution revolve around the issues of whether there is mining and/or subsidence on the landfill site and in the surrounding area. Evidence showing mining and subsidence are certainly a means of Citizens to meet its burden to prove that the landfill causes or threatens to cause water pollution.

For a good understanding of the layout of the landfill area, refer to the maps contained in C. Gr. Exh. 7, page 2; C. Gr. Exh. 13 page 5, and C. Exh. 26, Appendix X.[1/] The viewer should compare with the maps, inter alia, the testimony of the neighbors as to their observations of subsidence and indicia of mining found in the record at 80-3, 198-218, 291-2, 455-63, and 1066-68.

Almost all the state records introduced in this proceeding were considered by the Agency before it issued permits to the Respondents for the landfill. There is a gap in mining records until 1882 (R. 119). None of the records show coal removal from Section 21 (R. 124-5). Mr. Rice of the Illinois Department of Mines and Minerals (IDMM) testified as to a new exhibit for Citizens (C. Exh. 12). This exhibit is a report by a state mine inspector from 1874 noting mine location, physical characteristics and coal production for Sections 15 and 16 in Hampton Township, Rock Island County (R. 118-9). Upon cross examination Mr. Rice testified that the small mines in Sections 15 and 16 "apparently did not work into the landfill site" (R. Exh. 1). This conclusion was based on C. Exh. 12 and on the mined out coal area map from the Illinois State Geological Survey (Survey) as found in R. Exh. 1. As for coal removal, C. Exh. 12 has an entry for Section 16 but the document is not clear whether that coal was extracted solely from Section 16 (R. 124-5). The Survey map is drafted on a scale of one inch to a mile (R. 120) and is inaccurate for purposes herein (R. 121).

Citizens, through Mr. Bauer, an engineering geologist with the Survey, introduced C. Gr. Exh. 13 into the record. This also is a new exhibit that was not considered by the Agency. It is called Circular 439 and pages one through seven consist of surface field notes from the early 1920's on mines in Hampton Township; specifically Section 15, 16, 21 and 22 (C. Gr. Exh. 13, R. 133). Pages eight through 16 consist of underground mine notes, not of Hampton Township, but of the Coal Valley Area eight miles south (Id., R. 134-5). Mr. Bauer testified that the two areas have similar geological conditions. Pages 17 through 21 describe the borings taken in Sections 15 and 16 during the 1970's (Id., R. 138). The rest of the document provides a discussion of strippable coal reserves in Illinois and a description of the geology of the area (C. Gr. Exh. 13). Upon cross examination and in consultation with the map located in C. Gr. Exh. 7, page 2, Mr. Bauer testified that there was no coal mined in the south buffer or north fill areas (R. 158-61). He was unsure as to the south borrow area, but testified that a greater possibility existed as to the south fill area near the northern part of Section 21 (Id.). As for the 48-acre north buffer zone, Mr. Bauer

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1/ This is a bulky exhibit. Both maps are toward the back. One is marked Figure 2; the other is marked Drawing Number 780572. This last map should not be allowed to confuse the viewer -- it is of the Bledsoe Landfill, not the neighboring East Moline Landfill.

testified that C. Gr. Exh. 13, pages 22-25 (in consultation with C. Gr. Exh. 7, p. 2) indicate mining in the northwest quarter of the northeast quarter of the southeast quarter of Section 16 (R. 161-2). This spot was pinpointed by Bauer as north of borings B-2 and B-9 in the 48-acre north buffer zone (R. 163, C. Gr. Exh. 7, p. 2). The north buffer zone is not part of the active landfill area.

Citizens also introduced historical documents into evidence. A scrapbook contained articles on mines, #1, 3, and 6 which were located in a hollow through the Cook property and bordered on the north and northeast of the permitted landfill area (C. Exh. 16). A map, C. Exh. 50, shows mines #1-7 and two additional mines. When viewed in conjunction with C. Gr. Exh. 7, p. 2 mine #3 is on Cook property east of the north fill area, mine #6 is in the north buffer zone north of the north fill area, and mine #1 is east of mine #6. The other mines are even further east, away from the active landfill. Another map which attempted to pinpoint these mines is not helpful (C. Exh. 51).

Citizens introduced three exhibits that were not before the Agency in its permitting process (C. Exh. 9, 10, 11). These exhibits were leases dated 1866, 1870, and 1872 for the right to mine coal in lots nine and ten of Section 16 and the east half of the northeast quarter of Section 21 (Id., R. 109-15). The legal description of the landfill includes the east half of the northeast quarter of Section 21 and the west thirty acres of lot 9 in the southeast quarter of Section 16 (C. Exh. 26, App. 1). It has not been sufficiently established that coal was removed from Section 21 or Section 16 as of 1874 (C. Exh. 12, R. 124-5). No other evidence has shown sufficiently that coal was removed from the active portions of the landfill, Section 16 and 21.

Likewise, the historical documents concerning the Happy Hollow Coal Mine area also fail to add anything significant to this issue (C. Exh. 14-8, 20, 22).

Citizens next relies on the testimony of four present or former neighbors of the area. These people testified before the Agency in the permitting process. Mr. Cook is an owner and former farmer of 43 acres of land to the east of the landfill (R. 198). Mr. Cook marked in red on a map where conditions appeared to him to suggest mining either on his property or on the landfill property (C. Gr. Exh. 7, p. 2). Numbers 1-5 are subsidences northeast of the landfill on Mr. Cook's own property (Id.). Number 6 is a well just northeast of the juncture of the north and south fill areas, on Cook property (Id.). Mr. Cook testified that twenty seven feet down in the well there is a tile line emanating from a northerly direction (R. 203-4). Number 7 is a subsidence on Cook's property north of #6 and south of #5. South of #6 is #8 which Mr. Cook claims is a spring where he has seen red sediment (R. 212-3, 215). Mr. Cook testified as to the location of a fan-type construction in the southwest portion of

the north fill area which he marked as #9 (C. Gr. Exh. 7, p. 2). This object was on a small ridge about twenty feet long and six feet high (R. 215-6) (See Mr. Cabry's description and location, infra). Number 10 is a large hole going into a slope, traveling in a southerly direction, north of the active landfill in the north buffer zone (C. Gr. Exh. 7, p. 2; R. 218). Number 11 is a small sinkhole at the northeast corner of the north fill area, a few feet from the Cook property line (Id., R. 219). Another sinkhole is marked as #12 and is located at the eastern edge of the north buffer zone (Id.).

A second Citizens' witness, Mr. Cabry, owns property east of Bledsoe's Landfill and the Cook property. He has farmed both his land and at one time part of the Bledsoe landfill area. Mr. Cabry has marked in green on the same map where he feels there are indications of mining (C. Gr. Exh. 7, p. 2, R. 454). Mr. Cabry describes what he calls an airblower that has a pulley and fan blades (See C. Gr. Exh. 40, #26). He claims this object would be used for ventilation of a mine shaft. This is marked as IX where the X approximates the location (Id.). Mr. Cabry has located this object at the very southwest corner of the north fill area while Mr. Cook located it north of that spot (#9 on C. Gr. Exh. 7, p. 2, also see above). Another witness saw this same object but the record is not clear as to where he marked the map (R. 291, 337). Number 2 is a depression at the extreme northwest corner of the north fill (C. Gr. Exh. 7, p. 2). Mr. Cabry testified that a horse and tractor had sunk in land east of the north buffer zone on Cook property (Id. #3X or X; R. 456-8). Mr. Cabry further testified as to subsidences already marked by Mr. Cook (R. 459-65) and the approximate location of an old railroad track, which he marked as a green dotted line on Cook property (C. Gr. Exh. 7, p. 2, R. 463).

Another area landowner testified as to subsidences in the western part of the north buffer zone and circled the general area with a red marker (Id., R. 83-4; C. Gr. Exh. 6, portions stricken).

The fourth landowner to testify was Mr. Wenke, who has lived in the area for over fifty years (R. 1061-2). He testified that a fan and ground opening were located in the southwest part of the north fill area, which had been marked as 1XA on the map (C. Gr. Exh. 7, p. 2, R. 1066-8). He also testified that a slope mine existed south of there, near boring B-13 (Id.).

Besides area landowners, both sides relied on experts for an opinion whether the landfill site caused or threatened to cause water pollution. The expert witness for Citizens was Dr. Campbell (C. Exh. 46). He found no direct evidence of mining on the Bledsoe property (R. 536). At the end of one hearing Dr. Campbell stated that it was "possible" that the landfill site had been undermined (R. 524), yet the very next day he testified that it was "most probable" that the site had been undermined (R. 541; see 554). The direct examination of Dr. Campbell proceeded into

a very general hypothetical discussion of what would happen if there was subsidence beneath the landfill and the resultant leachate migration (R. 545-53). The evidence presented supports Dr. Campbell's first opinion -- a possibility of undermining at the landfill site.

The Respondents' experts were Mr. Lovaas and Dr. Anderson. Mr. Lovaas testified that a possibility existed that the site was undermined, but that "there is no real hard evidence to indicate that it was done" (R. 833-4). Dr. Anderson testified that it is highly unlikely (R. 952). Lovaas testified that if one assumed that the site were undermined and that leachate entered the mine after subsidence, the leachate would not reach the aquifer in the Devonian limestone. It would be contained in the Pennsylvanian shale which contains the coal seams and "is highly impermeable type material, very plastic, and has a high clay content." The limestone aquifer is below the shale (R. 835-6).

As for permeability of the soil at the site, Citizens has failed to bring forth any new evidence as to permeability testing that was not before the Agency. It simply disputes the prior test results. Citizens has failed to meet its burden of proof as to this issue.

In summary, the Board finds that Citizens has failed to prove by a preponderance of the evidence that the Respondents have caused or threatened to cause water pollution (Section 12(a)) or that contaminants placed upon the land by them create a water pollution hazard (Section 12(d). Citizens argues that the insufficiency of evidence of coal mining in the landfill area coupled with subsidences nearby demonstrates a threat of water pollution (C. Br. 15). The scarcity of records, the lack of evidence of mines and subsidence in the active landfill area, and the apparent agreement of all three expert witnesses that there is only a possibility of undermining at the site have operated against Citizens. The scarcity of evidence does not relieve Citizens of its burden. Citizens has attempted to show that subsidences and other indications of mining in surrounding area are sufficient to meet its burden of proof as to this landfill site. However, that burden has not been met. The Board finds that Respondents have not violated Sections 12(a) or 12(d) of the Act as alleged in Count VII.

Count VIII

Count VIII alleges violations of the standard landfill requirements located at 35 Ill. Adm. Code 807.314 (Old Rule 314), and the cover requirements located at 35 Ill. Adm. Code 807.305.

Citizens alleges that the site does not have adequate measures to monitor and control leachate (807.314(e)). There has been no new evidence on this issue presented to the Board. The Agency has already found that the measures are adequate and has

issued an operating permit based on such finding. The Board finds that Citizens has failed to carry its burden and that there is no violation of Section 807.314(e).

Citizens alleges that Respondents have failed to provide adequate roads to allow for orderly operations within the landfill site (Section 807.314(b)) and have failed to provide adequate measures to control dust and vectors (Section 807.314(f)).

Section 807.314 (in pertinent part) provides that . . . "no person shall cause or allow the development or operation of a sanitary landfill which does not provide . . . (b) [r]oads adequate to allow orderly operations within the site; . . ." (emphasis added) and "f) Adequate measures to control dust and vectors; . . . ." In Hamman v. IEPA, 40 PCB 255 (January 8, 1981; PCB 80-153) the Board specifically held that "[r]ule 314(b) relates only to roads within the site." 40 PCB 257. The Board subsequently found that consideration of the tracking of mud from onsite to offsite roads was proper since it was the result of disorderly operations onsite. IEPA v. Wasteland, Inc., et al., 48 PCB 01 (August 26, 1982; PCB 81-98) aff'd sub nom. 118 Ill. App. 3d 1041, 456 N.E. 2d 964 (3d Dist., 1983). In the Wasteland Board Opinion, the Board found that excessive mud buildup and dust problems on roads outside the site aggravated traffic flow by the landfill. There was evidence that roads within the site contributed to the mud and dust problem. 48 PCB 19.

The Act, the above regulations and precedent dictate that mud on roads offsite, if proven to emanate from the landfill and within control of the owner or operator or his agents, can be regulated under Section 807.314(b). "Adequate" can mean both quantity and quality. In Wasteland, on-site roads were considered inadequate because of their muddy and dusty quality and therefore violated Board regulations. If substantial mud tracking occurs from the landfill to offsite roads, then the on-site roads would be inadequate. Regarding other problems on offsite roads, these are matters more properly handled by local authorities such as road commissioners, county boards, and county highway departments.

Herein, Citizens has not shown by a preponderance of the evidence either that mud and dust deposited on 20th Avenue North was from trucks entering or leaving the Bledsoe Landfill or whether such activities were under the control of the Respondents. An access road off 20th Avenue North leads to both the Bledsoe and the East Moline Landfills (R. 50-1). East Moline's and Respondent's trucks travel on both roads (R. 428-9; C. Gr. Exh. 26, App. IX). As for vectors, testimony in the record shows that there were flocks of seagulls around the landfill on Easter Sunday (R. 434). Mr. Cabry states that the rodent population has increased in the buildings on his property (R. 469-70). Citizens claims that a photograph depicting a single bird visiting the landfill on May 30, 1982 (C. Gr. Exh. 40, #20) is evidence of a vector problem (C. Brief 25). This is insufficient evidence of a vector problem. The Board finds that Respondents did not violate Section 807.314(b) and (f).

Subsection (c) of Section 807.314 essentially provides that a landfill must control access to the site with fencing, gates or other measures. A fence separates the north buffer zone from the golf course (R. 377). The east property lines of both the north buffer zone and north fill area are separated from Cook property by a heavily brush-grown old woven wire fence (Id.). The eastern property line of the south fill and borrow areas has an old dilapidated fence (R. Id.) which was being replaced by Mr. Bledsoe at the time of the hearing (R. 472). There is a right-of-way here to allow ingress and egress to Mr. Cook's property (R. 225). There is a fence along the east side of this right-of-way (Id.). A new fence has been installed along 20th Avenue North (R. 1014). Fences and gates exist on the western side of the landfill (R. 1013-4). Mr. Bledsoe testified that he is in the process of upgrading fences (Id.). Photographs depicting the fences are included in C. Gr. Exh. 40, #53, 56, 57-63. Although the Board realizes Mr. Bledsoe is in the process of upgrading the fences, it will order him and URICL to repair or replace the dilapidated fences. The Board finds that Respondents Mr. David Bledsoe and URICL have violated Section 807.314(c) and their permits by failure to implement the representations in the permit application, part IV, B, #28 m (C. Gr. Exh. 26). Because of the lapse of time since the conclusion of hearing, the Board realizes that the upgrading process may already have been completed.

Section 807.314(h) provides that the landfill operations be concealed from public view. Citizens presented area landowners who testified that they can observe operations either from the front yard (R. 39-42) or from an adjacent barn (R. 434, 439-40). Photographs #65, 66, 67, and 68 were properly excluded (C. Gr. Exh. 40) by the hearing officer because of the use of a zoom lens (R. 371-2). Evidence entered by Respondents showed that the landfill on the whole is very secluded (R. Gr. Exh. 24; R. Exh. 25). Additional screening is necessary as the landfill operations are visible from adjacent properties. The Board finds Respondents Mr. David Bledsoe and URICL have violated Section 807.314(h) and their permits by failure to implement the representations in the permit application, part IV, B, #28 n (C. Gr. Exh. 26). The Board realizes that additional vegatation may have been planted since the hearing to provide screening.

Under Count VIII Citizens additionally alleges that Respondents violated the depth of cover requirements of Section 807.305(a), (b), and (c) for daily, intermediate and final cover and asserts that the "cover material is relatively permeable; increasing the likelihood of groundwater pollution leachate" (C. 2d Am. Cplt., 15). As for permeability of the cover material, no new evidence has been presented. The hearing officer properly excluded Citizens attempts to dissect the results of the soil boring tests that had been submitted during the permitting process.

In summary, Respondents have not violated Section 807.314(b), (e), and (f), or Sections 12(a) and (d) of the Act. Respondents David R. Bledsoe and URICL have violated Sections 807.314(c) and

(h), and their permits for the reasons above. Section 807.305 will be discussed under Count IX. No penalty will be imposed for these technical violations since they are de minimus and the Respondent was in the process of correcting them.

Count IX

Citizens asserts that cover was inadequate or nonexistent on fifty days (C. Brief, 23). Mr. Cabry testified that he marked an X on his calendar whenever the landfill was not covered at the end of the work day (C. Exh. 45, R. 437). Using binoculars (R. 493), whenever he could see trash or litter he would mark an X (R. 437). Mr. Gerstner likewise kept a calendar for similar purposes (C. Exh. 41; R. 275) and also took many photographs showing landfill cover conditions (C. Gr. Exh. 40, #1-20). The Board notes that only photographs #5 (2/28/82), 6 (3/29/82), 7 (3/30/82), 8, and 9 (3/31/82), and possibly 13 (4/18/82) show cover problems. One of Dr. Zoller's photographs appears to show a cover problem (C. Exh. 5, 3/21/82).

The Respondents introduced evidence that out of six inspections by the Agency from September, 1981 through April, 1982 the landfill had a perfect score (R. Exh. 11-16, R. 741). Testimony showed that Agency inspectors must exercise a degree of reasonableness in judging the appropriateness of cover (R. 748). An Agency inspection on May 28, 1982 showed two days of no cover because of recent precipitation (R. Exh. 17). The site appeared to be in generally good condition . . . (Id.). Mr. Bledsoe testified that the fill closed at 5:00 p.m. and that cover was usually in place by 6:00-6:30 p.m. (R. 980). The daily cover practice did vary with weather conditions (R. 981-2). He also testified that there were only three occasions when cover was not complete (Id.). The dates were May 28, 1982, for which he was cited, and March 21 and 28, 1982 (R. 982, 986-7). This testimony, as buttressed by the Agency citation (above), rebuts the lack of cover allegations as claimed to be evidenced by Dr. Zoller's photographs (C. Exh. 1-5). Upon viewing Mr. Gerstner's photographs, Mr. Bledsoe opined that #5 was not representative of conditions on February 28, 1982; #6-9 were taken with a zoom lens and before cover was in place, and #13 distorted the natural view because a zoom lens was used. (R. 991-7).

Citizens alleges that Respondents violated 807.302, 807.305, 807.314 and their permits (the permit incorporates the permit application) by not only failing to provide adequate cover (above), but by using sludge and ash instead of borrow material (C. 2d Am. Cplt., 16-7). Mr. Cabry claimed that Respondents used sludge and snow on certain dates to cover the active site (C. Exh. 45, R. 442-9). Specific dates for the sludge, as well as for the no daily cover allegations above, are alleged in Citizens second amended complaint (C. 2d Am. Cplt., 24-5). Mr. Cabry claims photograph 10 portrays sludge and ash as cover (C. Gr. Exh. 40, #10; R. 433, 442-6).

The Respondents countered by Mr. Bledsoe testifying that sludge, ash and snow are not used as cover materials and that at the time of these allegations, April 1982, the landfill did not accept sludge (R. 998-1000).

Citizens has gone to great lengths to document what it considers to be lack of cover at the landfill. However, the Board is persuaded by the testimony of Agency inspectors in conjunction with Mr. Bledsoe's explanations. The Agency inspectors consistently found that the landfill cover was adequate within a reasonable interpretation of the regulations. The Board finds that the Respondents have not violated Sections 807.302, 807.305, and 807.314, their permits, or Sections 12(a) and (d) of the Act as alleged in Count IX.

Count X

Citizens alleges that Respondents caused or allowed open dumping at the landfill and on public highways, and have caused or allowed blowing trash to occur in and around the landfill (15 days, see C. 2d Am. Cplt., 18-9). Although Citizens alleges a violation of Section 807.306 (old Rule 306, Ch. 7) in its brief (p. 29-30), this section was not pleaded and therefore it is not before the Board. Citizens introduced photographs which show some papers on the Zoller/Cabry fenceline on April 4, 1982 (C. Exh. 2, 3). Mr. Gerstner testified that the paper did come from the Bledsoe Landfill one windy day (R. 340). In fact, the winds were still blowing from the day before as testified to by Mr. Cabry (R. 441, 450). Five additional photographs are introduced by Citizens in support of their allegations (C. Gr. Exh. 40, #21-25). However, these five photographs and the testimony introducing them fail to link this wind-blown trash to the landfill or to acts or omissions by the Respondents or their agents.

As for the open dumping charges, Citizens introduced eight photographs (C. Gr. Exh. 40, #28-31, 33, 34, 37, 39, 40) showing debris dumped along the public right-of-way of 20th Avenue North and just outside the main landfill gate (#37 was not admitted, R. 368). Mr. Bledsoe testified that he has had trouble with midnight dumpers depositing debris outside the gate before or after hours (R. 1004-5). He further testified that he polices the area, both on and off site, and picks up litter (R. 1006). Again Citizens has failed to link the dumping with acts or omissions by the Respondents or their agents. Any number of sources could have been the cause: trucks going to either area landfill, the midnight dumpers or others. It is unreasonable to assume that Mr. Bledsoe actively encourages or has any control over persons who illegally dump material on roads near the two landfills. Enforcement against such persons can be accomplished by a number of agencies. Likewise litter blowing from trucks can be controlled by local or county ordinances. There is also a law against littering on state highways. The Board finds that Respondents have not violated Sections 807.302, 807.305, 807.314, their permits, or Sections 12(a) and (d) of the Act as alleged in Count X.

Count XI

Citizens alleges that Respondents have not concealed the landfill from view (see discussion above under Count VIII). Citizens claimed that fast-growing trees were not being planted to shield the site and that trees and berms were not being used to deaden noise from the site along the south and east portions of the landfill (C. 2d Am. Cplt., 20). Mr. Bledsoe testified that there is a program for planting trees and berming and it is being implemented (R. 665-6, 669-72).

Citizens additionally alleges that the noise emitted not only from the landfill, but from the traffic to the landfill, violates Section 24 of the Act and 35 Ill. Adm. Code 900.102. Section 24 provides that

> "[n]o person shall emit beyond the boundaries of his property any noise that unreasonably interferes with the enjoyment of life or with any lawful business or activity so as to violate any regulation or standard adopted by the Board under this Act."

The evidence presented by Citizens is in line with its very general allegations. One area resident complained of banging tailgates, bulldozer noise, and truck traffic noise (R. 44, 59, 60). The hearing officer properly excluded evidence of offsite noise pollution (R. 268-72, 390-3 C. Exh. 42, 44). Sections 24 and 900.102 provide for on-site noise regulation. Citizens could not identify which truck was going to which landfill and even if the Board were to consider the evidence excluded by the hearing officer, the allegations and evidence would be too general to support a finding by the Board that Respondents violated the law. The factors to be used in determining an unreasonable interference are located at Section 33(c) of the Act, determined the Illinois Supreme Court in Incinerator, Inc. v. IPCB, et al., 59 Ill. 2d 290, 319 N.E. 2d 794 (1974). Although this was an enforcement proceeding pursuant to the air nuisance section (§9) as defined by Section 3(b), Incinerator is also persuasive where an unreasonable interference from noise is alleged pursuant to Section 24 of the Act.

> "Section 33(c) sets forth four categories of factors which bear upon the question of reasonableness and specifically directs that the Board 'take into consideration' such factors in making its orders and determinations." Incinerator, slip op. at 3.

The Board has considered these factors in interpreting an unreasonable interference in a noise enforcement proceeding. James Kaji, et al.v. R. Olson Mfg. Co., Inc. 41 PCB 245 (April 16, 1981; PCB 80-46). The Board finds that the health, the general welfare and the property of the area residents are not being harmed by noise emitted from the landfill or by the appearance of the site; that properly operated landfills are needed by society; that the rural

location of this landfill is suitable; and that emissions from the landfill have not been shown to need correction. The Board further finds no unreasonable interference and that Respondents have not violated Section 24, 35 Ill. Adm. Code 900.102 or their permits and regulations thereto as alleged in Count XI.

Count XII

Citizens alleges runoff and on-site ponding violations by Respondents. Respondents' permit application provides that

> "[t]he entire site . . . shall be graded and provided with drainage appurtenances to minimize runoff onto and over the fill, to prevent erosion of the fill, to drain off rainwater falling on the fill, and to prevent the collection or ponding of surface water." (Page 10).

Likewise, operating permit condition No 1 provides:

> "[s]ite surface drainage . . . shall be such that no adverse effects are encountered by adjacent property owners." (C. Exh. 32, #3; C. Exh. 35, #1).

The owner of the golf course testified that on-site ponding occurred on one day, June 23, 1982, yet none of the other Citizens' witnesses, even when using binoculars and telephoto lenses, observed any on-site ponding. Agency inspectors likewise did not report any ponding (other than water being pumped out of a cutoff trench; R. Exh. 13), even after heavy rains in late May, 1982 (R. 792, R. Exh. 11-17). An Agency inspection report for July 1, 1982 was not allowed into evidence (R. 794-5). There is insufficient evidence to support a finding of ponding violations and therefore the Board finds that as to on-site ponding, Respondents have not violated their permits.

The evidence of alleged runoff violations on four days consists of six photographs submitted by Citizens (C. Gr. Exh. 40, #48, 49, 50, 51, 53, 56). The photographs show water offsite in ditches along 20th Avenue North (Id., R. 312). There is no evidence (1) of drainage patterns prior to the operation of the landfill; (2) that operation of the landfill is aggravating the prior drainage pattern of the ditch; (3) that the runoff that has occurred has not been minimized; and (4) that there have been adverse effects encountered by adjacent property owners. Therefore, the Board finds that Respondents have not violated their permits or 35 Ill. Adm. Code 807.302. To the extent that Citizens has alleged violations of Section 12(a) and 12(d), the Board finds Respondents not in violation.

Count XIII

There appears to be some confusion over which landfill gate is alleged by Citizens to have been left open by Respondents.

The main gate to the landfill is located on the north-south access road that leads to both the Bledsoe and the City of East Moline Landfill (R. 1011-14; see C. Gr. Exh. 7, p. 2; C. Gr. Exh. 40, #31; R. B. 69-70). The gate located at the southern edge of the south buffer zone is located on 20th Avenue North, an east-west road. Mr. Bledsoe testified that this gate does not lead to the landfill site but is used by the Army Corps of Engineers when it conducts its excavation project (Id., C. Gr. Exh. 40, #51, 53). Mrs. Gerstner testified for Citizens that "the gate" was left open five times (C. Exh. 44, p. 2; R. 394-5). This gate is the Army Corps' gate, not the main entrance gate (R. 422-3). There is no evidence that the main gate was left open and unattended at any time. Mr. Bledsoe denies that the Army Corps' gate was left open and unattended in November and December of 1981 as alleged by Mrs. Gerstner (R. 1012-13). He testified that on two Sundays intruders broke in through the Army Corps' gate but that the next day he closed and locked the gate (R. 1013). As for Citizens allegation of dumping at the site, to the extent that it involves dumping at or around the main gate, the Board has already considered this under Count X and found Respondents not in violation. Likewise, the Board finds that Respondents have not violated the supplemental permit. To the extent that Citizens has alleged violations of 35 Ill. Adm. Code 807.302 and Sections 12(a) and 12(d) of the Act in this count, the Board finds that Respondents are not in violation.

Count XIV

Citizens alleges that Respondents failed to submit groundwater samples. Mr. Bledsoe testified that he submitted the required samples to the Agency shortly after the due date, January 15, 1982 (R. 659-60).

As there is no evidence in the record to support this allegation, the Board finds that Respondents have not violated 35 Ill. Adm. Code 807.317. To the extent that Citizens has alleged violations of Sections 12(a) and 12(d) of the Act and Section 807.302, the Board finds that Respondents are not in violation.

SUMMARY

The Board finds that Respondents David R. Bledsoe and Upper Rock Island County Landfill, Inc. have violated Sections 807.314(c), 807.314(h) and their permits for the reasons specified above. The Board further finds that there are no aggravating or mitigating factors present. As no penalty has been imposed, the Board need not discuss the Section 33(c) factors in conjunction with the penalty issue.

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

ORDER

1. The Respondents David R. Bledsoe and Upper Rock Island County Landfill, Inc. have violated 35 Ill. Adm. Code 807.314(c) and 807.314(h).

2. The Respondents David R. Bledsoe and Upper Rock Island County Landfill, Inc. have violated their permits by failure to implement the representations in the permit application, part IV, B, #28 m and n.

3. The Respondents David R. Bledsoe and Upper Rock Island County Landfill, Inc. shall replace or repair dilapidated fences around the perimeter of the Upper Rock Island County Landfill (Bledsoe Landfill) in accordance with 35 Ill. Adm. Code 807.314 (c) by June 1, 1985.

4. The Respondents David R. Bledsoe and Upper Rock Island County Landfill, Inc. shall conceal the sanitary landfill operations from public view by planting rapidly growing vegetation in accordance with 35 Ill. Adm. Code 807.314(h) by June 1, 1985.

5. All Board rulings on motions as set out in this Opinion are hereby incorporated as if fully set forth herein. To the extent that any motions have not been explicitly ruled on, they are denied.

IT IS SO ORDERED.

Board Members Jacob D. Dumelle, J. Theodore Meyer and Bill Forcade concurred.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 21st day of November, 1984 by a vote of 5-0.

Dorothy M. Gunn

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board