

ILLINOIS POLLUTION CONTROL BOARD  
June 4, 1992

COUNTY OF OGLE,	)	
	)	
Complainant,	)	
	)	
v.	)	AC 92-26
	)	(Administrative Citation)
	)	
ROCHELLE DISPOSAL SERVICE,	)	
INC., and CITY OF ROCHELLE,	)	
ILLINOIS,	)	
	)	
Respondent.	)	

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

This action was initiated on April 2, 1992 by the filing of an administrative citation (AC) by the County of Ogle (County). The AC charges Rochelle Disposal Services (Rochelle Disposal) and the City of Rochelle (City) with violation of Section 21(o)(12) of the Act.<sup>1</sup> On April 6, 1992, the County filed a motion to amend the caption. As no responses in opposition have been filed, the motion is granted. The correct caption as amended appears on this Order. Both respondents filed a petition for review. Rochelle Disposal filed its petition on April 15, 1992 and the City filed its petition on May 4, 1992.

On April 15, 1992 Rochelle Disposal filed a motion to strike and to dismiss and a motion and argument for summary judgment. On April 22, the County filed a response only to the motion to strike and dismiss. The Board has delayed decision on the pending motions until its receipt of the hearing transcript and exhibits in AC 91-45, a case involving similar motions by these same parties.<sup>2</sup> The Board on its own motion incorporates these materials into this record.

The basis for Rochelle Disposal's motions are that it is not a proper party to this action. Rochelle Disposal argues that it is not a proper party to this action because the City is the person which holds the permits for this site, and because it was

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<sup>1</sup>Section 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.

<sup>2</sup>In the interests of consistency, the Board has also delayed decision on similar motions pending in another appealed AC case involving these parties: AC 91-32.

previously dismissed as a party to AC 89-68 pursuant to stipulation. There is no dispute that the City holds all permits at the site, or that Rochelle Disposal conducts waste disposal operations at the site on the City's behalf pursuant to contract. The County argues that Section 21(p) of the Act, under which Rochelle Disposal is charged, is not by its terms limited to holders of permits. The Section in pertinent part 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".

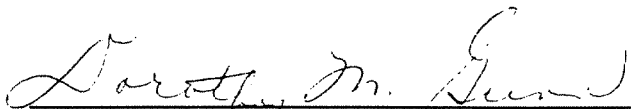
The preamble to the contract between the City and Rochelle Disposal provides that it is "for the operation of the City owned landfill". Article I goes on to provide that Rochelle Disposal is to "furnish all equipment and labor necessary for the collection of garbage within the City...together with the landfill operation necessary to dispose of all the solid waste in conformance with" the Act and Board regulations, as well as other requirements (City, April 22, 1992 Response to Motion, Contract, p. 1).

The Board agrees with the County that, under the circumstances of this case, Rochelle Disposal is properly a party to this action as a person conducting a waste operation at a permitted site.

The motions to dismiss and for summary judgment are hereby denied.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 4<sup>th</sup> day of June, 1992, by a vote of 7-0.

  
Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board