

ILLINOIS POLLUTION CONTROL BOARD  
December 14, 1994

COUNTY OF DUPAGE, )  
 )  
 Complainant, )  
 )  
 v. ) AC 94-20  
 ) (Administrative Citation)  
 )  
 WASTE MANAGEMENT OF ILLINOIS )  
 (GREEN VALLEY LANDFILL), )  
 )  
 Respondent. )

RAYMOND E. HANSEN, ASSISTANT STATE'S ATTORNEY APPEARED ON BEHALF OF COMPLAINANT;

PERCY L. ANGELO and JONATHAN E. SINGER OF MAYER, BROWN and PLATT, APPEARED ON BEHALF OF RESPONDENT.

OPINION AND ORDER OF THE BOARD (by E. Dunham):

This matter comes before the Board on an administrative citation issued by the County of DuPage (County) to respondent on April 1, 1994. On May 4, 1994, Waste Management (WMI) filed an appeal of the administrative citation.

A hearing on this matter was held on August 25, 1994, in Wheaton, Illinois before hearing officer Allen Schoenberger. Respondent filed its post-hearing brief on October 11, 1994. Complainant filed its post-hearing brief instanter on October 12, 1994.

The administrative citation alleges that Waste Management is the present operator of the Green Valley Landfill in Naperville, Illinois. The administrative citation was issued as a result of an inspection of the facility on February 12, 1994. The administrative citation alleges violation of Section 21(o)(5) of the Act (415 ILCS 5/21(o)(5)(1992)) which carries a statutory civil penalty of \$500.

MOTIONS

Before reviewing the administrative citation the Board will consider various pending motions. Before the Board is a "Motion to Strike" filed on October 11, 1994, by respondent and a "Motion to Strike Complainant's Post-Hearing Brief" filed on October 13, 1994. The County of Du Page filed a "Response to the Motion to Strike" on October 18, 1994. On October 27, 1994, WMI filed a response to complainant's response. The County of Du Page filed a "Response to Respondent's Motion to Strike Complainant's Post Hearing Brief" on October 26, 1994.

In the motion to strike, respondent seeks to strike "immaterial and prejudicial" allegations from the administrative citation and from the opening statement presented at hearing. Respondent also seeks to strike Exhibits 3 & 5<sup>1</sup> admitted into evidence at the hearing. Respondent claims that the allegations are irrelevant to the violation alleged in the administrative citation and have been placed in the citation solely to prejudice WMI.

In its response, complainant claims that the motion to strike is untimely. (35 Ill. Adm. Code 103.140.) Complainant also asserts that Exhibits 3 & 5 are relevant to show the conditions observed on the day of the inspection.

The Board finds that the motion to strike is timely filed. The Board further finds that the exhibits were not prejudicial to WMI. The respondent's motion to strike materials entered into the record by the County is therefore denied.

In its motion to strike complainant's brief, respondent claims that pursuant to the hearing officer's order, simultaneous post-hearing briefs were to be filed with the Board on October 11, 1994, with the parties serving each other via facsimile or messenger on the same day. Respondent states that it served its brief on the County via facsimile starting transmission at approximately 4:15 on October 11, 1994. Respondent claims that the County, in violation of the hearing officer's order did not serve its brief on WMI until after the close of business on October 11, 1994, by sending a facsimile at approximately 7:40 p.m. WMI claims that it is prejudiced by this late filing since the County had the opportunity to review respondent's brief prior to submitting its brief thus, circumventing the intent of simultaneous filing.

In its response, complainant asserts that it did not review respondent's post-hearing brief before sending its post-hearing brief to respondent via facsimile, though no affidavit was filed with the assertion. Complainant claims that the granting of respondent's motion would result in great prejudice to complainant while respondent is not prejudiced by the filing of the complainant's brief one day late.

The Board denies complainant's motion and accepts complainant's post-hearing brief instanter.

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<sup>1</sup> Exhibit 3 & 5 are excerpts from the Narrative Inspection Report prepared the County of Du Page's inspector on February 11, 1994.

DISCUSSION

Pursuant to Section 31.1(d)(2) of the Act, if the Board finds the alleged violation occurred, then the final order issued shall include a finding of violation, and shall impose the penalty specified in subdivision (b)(4) of Section 42, i.e. \$500 per violation. Section 31.1(d)(2) further provides that if the Board finds the violation resulted from uncontrollable circumstances, it shall adopt a final order which makes no finding of violation and which imposes no penalty. Thus, a two-part inquiry is required: first, the Board must determine whether there was a violation based on the record in this case, and if so, the Board must then determine whether the violation was caused by uncontrollable circumstances. The Board may not hold that a violation has occurred unless it finds by a preponderance of the evidence that the record proves that a violation occurred.

The sole violation alleged is a single count violation of Section 21(o)(5) of the Act:

5. uncovered refuse remaining from any previous operating day or at the conclusion of any operating day, unless authorized by permit.

The sole issue before the Board in this administrative citation is whether the alternate daily cover placed by WMI on February 11, 1994 was adequate.

Witnesses at hearing were Mr. Rodd Elgis, Principal Environmental Specialist, for the County and Mr. Tim Wolford, Operations Manager, for WMI. Mr. Elgis acknowledged that he had been inspecting the Green Valley Landfill of WMI on his own for five months, and that he had limited experience in the placement of alternate daily cover (ADC) (Tr. at 93.) In Mr. Wolford's testimony, he indicated that he had been managing the landfill for 16 months and that the landfill had been using the same type of ADC for the entire 16 month period. (Tr. at 149 - 151.) Mr. Wolford stated that the method employed in removing ADC is to bury the plastic sheeting in refuse and cover the refuse with earth at the next opportunity. (Tr. at 172 - 177.)

Mr. Elgis testified that he arrived at the landfill on February 12, 1994 at 7:00 a.m. (Tr. at 33.) He observed that the previous day's working face was covered with plastic tarps. (Tr. at 44.) He also observed that areas of the previous day's working face were exposed through the tarp. (Tr. at 45.)

Contemporaneous photographs were presented by the County in support of its allegation that waste remained uncovered from the previous working day. (Comp. Exh. 4.) The photographs show plastic sheeting used as ADC covering the prior days' working face. Some areas of exposed waste are shown in the photographs.

The County alleges that the uncovered waste remained uncovered from the previous day.

In rebuttal, WMI presented testimony that landfill workers were in the process of removing and burying the ADC when the County inspector arrived. WMI claims that the waste was not left uncovered from the previous workday (Tr. at 164) and the exposed waste in the photographs is the result of work done the morning of the inspection (Tr. at 175). The photographs show waste on top of some of the plastic sheeting and heavy equipment working on the waste high on the face of the slopes.

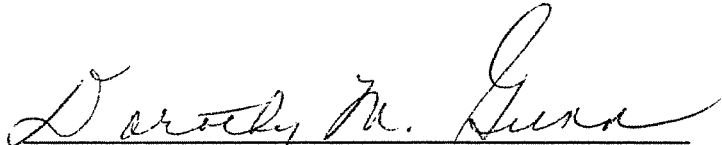
WMI presented testimony from landfill personnel that questions the interpretation of events witnessed by Mr. Elgis during his inspection of the landfill. The testimony of Mr. Wolford depicted the photographic evidence as showing that no violation had occurred. The burden of proving that a violation has occurred rests solely upon the County. Based upon the testimony and the photographic evidence presented supporting WMI's assertion that there had been no violation, the Board finds that the County has failed to prove, by a preponderance of the evidence, that a violation has occurred.

This administrative citation is accordingly dismissed.

IT IS SO ORDERED.

Section 41 of the Environmental Protection Act, (415 ILCS 5/41 (1992)), provides for appeal of final orders of the Board within 35 days of the date of service of this order. The Rules of the Supreme Court of Illinois establish filing requirements. (See also 35 Ill. Adm. Code 101.246, Motion for Reconsideration.)

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above opinion and order was adopted on the 14<sup>th</sup> day of December, 1994, by a vote of 6-0.

  
 Dorothy M. Gunn, Clerk  
 Illinois Pollution Control Board