

ILLINOIS POLLUTION CONTROL BOARD
July 1, 1993

LOGAN COUNTY HEALTH	)	
DEPARTMENT,	)	
	)	
Complainant,	)	
	)	
v.	)	AC 92-50, Dockets A & B
	)	(Administrative Citation)
LINCOLN/LOGAN LANDFILL,	)	(Logan County No. 9204-AC-1)
	)	
Respondent.	)	

JOHN W. TURNER, LOGAN COUNTY STATE'S ATTORNEY, APPEARED ON BEHALF OF COMPLAINANT; and

BENJAMIN L. BONSELAAR APPEARED PRO SE ON BEHALF OF RESPONDENT.

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

This matter is before the Board on an administrative citation filed by complainant Logan County Health Department (County) on June 24, 1992. Respondent Lincoln/Logan Landfill (Landfill) filed a petition for review on July 27, 1992. Both filings are made pursuant to Section 31.1 of the Environmental Protection Act (Act). (415 ILCS 5/31.1 (1992).) A hearing was held on October 2, 1992, in Lincoln, Illinois. The County subsequently filed a brief, but Landfill did not.

The citation alleges seven separate violations of Section 21(o) of the Act: 1) refuse in standing or flowing water; 2) conducting a sanitary landfill operation in a manner which results in leachate flow entering waters of the state; 3) conducting a sanitary landfill operation in a manner which results in leachate flows exiting the landfill confines; 4) uncovered refuse remaining from the previous operating day; 5) deposition of refuse in any unpermitted portion of the landfill; 6) failure to submit reports required by permits or Board regulations; and 7) failure to collect and contain litter from the site by the end of each operating day. As discussed below, the Board finds Landfill in violation of each of the seven provisions.

BACKGROUND

Logan Landfill is located in Broadwell Township, Logan County, Illinois. The 20-acre site was originally permitted in

1972. (Comp. Exh. 17.)¹ This administrative citation is based upon an inspection of the site on April 21, 1992, by Jay F. Gaydosh. Mr. Gaydosh is a solid waste enforcement officer with the Logan County Health Department, and is certified by the Illinois Environmental Protection Agency (Agency) to inspect solid waste facilities. (Tr. 6-7.) The inspection report prepared by Mr. Gaydosh lists a number of violations of the Act and Board regulations. (Cit., Attachment 2.) The County subsequently filed this administrative citation, alleging seven separate violations of Section 21(o) of the Act.

At the October 2, 1992 hearing in this matter, the County presented testimony by Mr. Gaydosh and David C. Jansen of the Agency. Landfill questioned these witnesses, but did not present any witnesses of its own.

STATUTORY FRAMEWORK

Section 31.1 of the Act establishes the administrative citation process. When Agency personnel, or personnel of a unit of local government to which the Agency has delegated its authority, determines on the basis of direct observation that any provision of Section 21(o) or 21(p) has been violated, the Agency or unit of local government may issue an administrative citation.² The citation is then filed with the Board. If the person named in the citation does not file a petition for review within 35 days, the Board adopts a default order. If, as in this case, the respondent does file a petition for review, the Board holds a hearing on the citation. If the record demonstrates that the alleged violations occurred, the Board must adopt an order finding a violation and imposing the specified penalty. The only defense to a violation is a showing by the respondent that "the violation resulted from uncontrollable circumstances." (415 ILCS 5/31.1(d)(2) (1992.)) If respondent makes that showing, the Board

¹ Complainant's exhibits are indicated "Comp. Exh. __", respondent's exhibits are denoted "Resp. Exh. __", the administrative citation is indicated "Cit. __", and the transcript of the hearing is indicated "Tr. __."

² Section 21 was recodified by P.A. 87-752, effective January 1, 1992, so that the subsections formerly found at subsections (p) and (q) are now codified as subsections (o) and (p). Subsections (o) and (p) clearly state that those subsections are enforceable by administrative citation. However, Section 31.1 was not amended, and so still refers to enforcement of subsections (p) and (q) through the administrative citation process. The Board believes that it is subsections (o) and (p) of Section 21 that are eligible for the administrative citation procedure.

must adopt an order finding no violation and imposing no penalty.

Penalties in administrative citation cases are established by Section 42(b)(4) of the Act, which imposes a penalty of \$500 for each violation, plus any hearing costs incurred by the Agency or the Board. (415 ILCS 5/42(b)(4) (1992).) The Board has previously held that hearing costs incurred by a unit of local government must also be paid by respondent. (Sangamon County v. Miller (June 3, 1990), AC 92-37; County of DuPage v. E & E Hauling, Inc. (February 8, 1990), AC 88-76 and AC 88-77.)

DISCUSSION

As noted above, the County alleges that Landfill has violation seven provisions of Section 21(o).

Refuse in Standing or Flowing Water

Section 21(o)(1) prohibits a sanitary landfill which is required to have a permit from operating so as to result in refuse in standing or flowing waters. At hearing, Mr. Gaydosh testified that during the April 21 inspection of the Landfill, he observed several different areas where water had ponded in the exposed refuse on the top surface of the landfill. Mr. Gaydosh also observed several areas where flowing water was moving through refuse that either had been blown or deposited on the landfill. (Tr. 8.) Mr. Gaydosh also provided photographs taken during the inspection. (Comp. Exh. 1-6.) The County points to this evidence, and contends that the testimony and exhibits prove the allegation of refuse in standing or flowing waters.

In its petition for review, Landfill stated that refuse in standing water was a problem "due to surface run off water that the county inspector stopped us from pumping into an evaporation area on site." (Petition.) At hearing, Landfill asked Mr. Gaydosh a series of questions about the weather in the days immediately before the inspection, but did not draw any conclusions or make further argument. (Tr. 59-64.)

The Board finds that Landfill violated the prohibition against refuse in standing or flowing water. Mr. Gaydosh testified that he observed refuse in both standing and flowing water, and presented photographs in support of that testimony. Those photographs clearly show refuse in water. Landfill does not argue that the violation was the result of uncontrollable circumstances.³ Therefore, the Board finds Landfill in violation

³ The Board has previously held that bad weather does not necessarily constitute uncontrollable circumstances (County of Ogle v. Rochelle Disposal Service (May 20, 1993), AC 92-26; In re

of Section 21(o)(1), and will impose the statutorily established penalty of \$500 for this violation.

Leachate Flows Entering Waters of the State

Section 21(o)(2) prohibits a sanitary landfill which is required to have a permit from operating so as to result in leachate flows entering waters of the State. Mr. Gaydosh testified at hearing that he observed a leachate seep in the southwest corner of the landfill. He stated that the leachate flowed along a washed-out area and into a drainage ditch. That drainage ditch connects with Salt Creek. Mr. Gaydosh testified that Salt Creek is a water of the State, and provided photographs of that leachate flow. (Tr. 17-20; Comp. Exh. 7.) The County argues that this evidence proves the allegation of leachate flows entering waters of the State.

In its petition for review, Landfill stated that "[l]eachate flows were contained through the use of some absorbent material, hay, straw." (Petition.) Landfill did not make any further argument on this count at hearing.

After reviewing the record, the Board finds that Landfill violated the prohibition against leachate flows entering waters of the State. Mr. Gaydosh's testimony is unrebutted, and the photographs show a greenish-tinted liquid flowing from the drainage ditch into the creek. Landfill does not argue that the violation was the result of uncontrollable circumstances. Therefore, the Board finds Landfill in violation of Section 21(o)(2), and will impose the statutorily established penalty of \$500 for this violation.

Leachate Flows Exiting the Landfill Confines

Section 21(o)(3) prohibits a sanitary landfill from conducting operations resulting in leachate flows exiting the landfill confines. At hearing, Mr. Gaydosh testified that he observed two areas where leachate had moved outside the boundaries of the landfill: 1) on the east face, where leachate flows converged upon the berm and flowed south and east to the floodplain area adjacent to Salt Creek; and 2) in the area where the leachate moved south into the drainage ditch and then flowed into the creek. (Tr. 20-27.) Mr. Gaydosh's testimony was supported by photographs. (Comp. Exh. 3, 6, 7, 8.) The County maintains that this evidence supports the allegation of leachate flows exiting the landfill confines.

Dan Heusinkved, County Clerk, County of Whiteside (January 21, 1988), AC 87-25), although weather can contribute to a finding of uncontrollable circumstances (St. Clair County v. J & R Landfill (May 10, 1990), AC 89-18).

In its petition for review, Landfill stated that "[l]eachate flow was confined to the landfill by means of absorbent material". (Petition.) At hearing, Landfill asked Mr. Gaydosh whether he had tested any of the liquid leaving the site. Mr. Gaydosh stated that it had been tested in the past, but that no tests were done on the date of the inspection. (Tr. 61-63; 69.)

After reviewing the record, the Board finds that Landfill violated the prohibition against leachate exiting the landfill confines. Mr. Gaydosh's testimony that the leachate was outside the landfill boundaries is un rebutted. Landfill did raise an issue as to whether the liquid was indeed leachate, or whether it could have been run-off from heavy rains. However, the photographs show various liquids with either a green or black tint, and a crust on the top. (Comp. Exh. 6, 7.) The Board finds that the County has carried its burden of proof. (415 ILCS 5/31.1(d)(2) (1992).) Landfill does not argue that the violation was the result of uncontrollable circumstances. Therefore, the Board finds Landfill in violation of Section 21(o)(3), and will impose the statutorily established penalty of \$500 for this violation.

Uncovered Refuse

Section 21(o)(5) prohibits the operation of a sanitary landfill so as to result in uncovered refuse remaining from the previous operating day. Mr. Gaydosh testified to two different problems in this area: 1) the active area of the landfill, where Mr. Gaydosh observed refuse left uncovered from at least the previous day's refuse deposits; and 2) the remaining portion of the landfill, which was not being used at that time, had some cover, but not sufficient cover to completely cover the refuse. As to the active area, Mr. Gaydosh testified that because his inspection began at 8:42 a.m., the refuse which was uncovered must have been left from the previous operating day. (Tr. 27-31.) Mr. Gaydosh's testimony was supported by photographs. (Comp. Exh. 1, 9.) The County argues that this evidence proves its allegation of uncovered refuse remaining from the previous operating day.

In its petition for review, Landfill states that the refuse did receive daily cover at the end of the operating day, "depending upon weather conditions, and available cover due water conditions in dispute." (Petition.) Landfill did not make any further argument at hearing.

The Board finds that Landfill violated the prohibition against uncovered refuse remaining from the previous operating day. Once again, Mr. Gaydosh's testimony is un rebutted. The photographs clearly show uncovered refuse in numerous areas of the landfill. Although Landfill does refer to weather and water conditions, there is no assertion, or proof, that the violation

was the result of uncontrollable circumstances. Thus, the Board finds Landfill in violation of Section 21(o)(5), and will impose the statutorily established penalty of \$500 for the violation.

Deposition of Refuse in Unpermitted Portion of the Landfill

Section 21(o)(9) prohibits the operation of a sanitary landfill so as to result in the deposition of refuse in any unpermitted area of the landfill. The County alleges that the permitted boundaries have been exceeded in two aspects: that the height limitations had been exceeded, and that the landfill had been filled further south than the permit allows.

As to the height limitation, Mr. Gaydosh testified that the landfill is limited to an elevation of 592 feet mean sea level, but that the upper surface of the landfill goes as high as 597.5 feet. (Tr. 50-57.) In support of this contention, the County introduced a topographical map prepared by Surdex Corporation. (Comp. Exh. 16.) The map, which was based on photography taken on June 27, 1991, shows several areas above 592 feet. Mr. Gaydosh testified that, based upon visual observation using the original reference point, the landfill continued to exceed the height limitation on the date of the inspection. (Tr. 54-57.)

Landfill has not addressed the allegation that the height limitation has been exceeded.

The Board finds that Landfill has violated the prohibition on deposition of refuse in an unpermitted area. This finding is based upon the topographical map submitted by the County, which clearly shows that several portions of the landfill exceed 592 feet, and upon Mr. Gaydosh's testimony that the landfill was still above 592 feet on the date of the inspection. Landfill has not challenged or rebutted that testimony and map in any way. Additionally, Landfill does not argue that the violation is the result of uncontrollable circumstances. Therefore, the Board finds Landfill in violation of Section 21(o)(9), and will impose the statutorily established penalty of \$500 for this violation.

Because we find that the alleged violation has been proven by evidence that the height limitations were exceeded, it is not necessary to determine whether the landfill has been filled further south than the permit allows.

Failure to Submit Reports

Section 21(o)(11) prohibits the operation of a sanitary landfill so as to result in the failure to submit reports required by permits or Board regulations. Mr. Gaydosh testified at hearing that as of the date of the inspection, Landfill had failed to file several different reports with the Agency, as required: groundwater monitoring reports (quarterly and annual),

closure/post-closure care cost estimate, and a financial assurance report. Mr. Gaydosh stated that he speaks to individuals at the Agency about these reports at least once a month, and that the Agency employees had stated that none of the reports had been filed by Landfill nor approved by the Agency, either before or after the April inspection. (Tr. 35-37.)

In its petition for review, Landfill stated that "[w]ithin the next two months, a compliance program will be initiated to comply with all reporting requirements under the permit conditions." (Petition.) Landfill has not made any further arguments on this issue.

The Board finds that Landfill violated the prohibition against failure to submit reports. Mr. Gaydosh's testimony is un rebutted. In fact, Landfill's response in its petition, that a compliance plan will be initiated, at least impliedly admits the violation. Landfill does not argue that the violation is the result of uncontrollable circumstances. Therefore, the Board finds Landfill in violation of Section 21(o)(11), and will impose the statutorily established penalty of \$500 for this violation.

Failure to Collect and Contain Litter

Section 21(o)(12) prohibits the operation of a sanitary landfill so as to result in the failure to collect and contain litter from the site by the end of each operating day. Mr. Gaydosh identified three areas around the landfill which had problems with litter: 1) a small ponded area southeast of the landfill where litter had collected in the brush adjacent to the berm surrounding that ponded area; 2) the northern brush line of the landfill itself, where litter was caught in the brush; and 3) the farmer's field to the northwest of the landfill, west of the access road, where there was a large amount of litter in the field. (Tr. 31-36.) Mr. Gaydosh's testimony was supported by photographs. (Comp. Exh. 4, 8, 10, 11.) The County argues that this testimony supports a finding of violation of Section 21(o)(12).

In its petition for review, Landfill stated that "[b]lowing litter is a problem that is handled through daily patrolling of existing boundaries. At the end of each working day litter is picked up." (Petition.) At hearing, Landfill asked Mr. Gaydosh if it had been a windy week, and if paper could have been blown around the day before or that evening. Mr. Gaydosh responded that it could have been, but later stated that weather conditions should not have affected the area not being filled, where there was also litter. (Tr. 60, 81-82.)

The Board finds that Landfill violated the prohibition against failure to collect and contain litter from the site by the end of each operating day. Mr. Gaydosh's testimony is

unrebutted, and the photographs show refuse as Mr. Gaydosh testified. Although Landfill did refer to windy conditions, there is no assertion, or proof, that the violation was the result of uncontrollable circumstances. Therefore, the Board finds Landfill in violation of Section 21(o)(12), and will impose the statutorily established penalty of \$500 for this violation.

PENALTIES

As previously noted, penalties in administrative citation cases are established by Section 42(b)(4) of the Act, which imposes a \$500 penalty for each violation. Therefore, Landfill is ordered to pay a civil penalty of \$3500, based upon the seven violations. For purposes of review, today's action (Docket A) constitutes the Board's final action on the matter of the civil penalty.

Landfill is also required by Section 42(b)(4) to pay hearing costs incurred by the Board and the County. The Clerk of the Board and the County are each ordered to file a statement of costs, supported by affidavit, with the Board and with service upon Landfill. Upon receipt and after appropriate review, the Board will issue a separate final order in which the issue of costs will be addressed. This order will be issued in Docket B.

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

ORDER

1. Respondent Lincoln/Logan Landfill, Inc. is found to have been in violation of Sections 21(o)(1), (2), (3), (5), (9), (11), and (12) (415 ILCS 5/21(o)(1), (2), (3), (5), (9), (11), and (12) (1992)) on April 21, 1992.

2. On or before August 1, 1993, respondent shall, by certified check or money order, pay a civil penalty in the amount of \$3500 payable to the Logan County Health Department. The payment shall be sent to:

Director of Financial Services
Logan County Health Department
2120 W. 5th Street Rd.
Lincoln, IL 62656

Respondent shall include the remittance form and write the case name and number and its social security or federal employer identification number on the certified check or money order.

3. Docket A is hereby closed.

4. Within 30 days of this order, the County shall file a

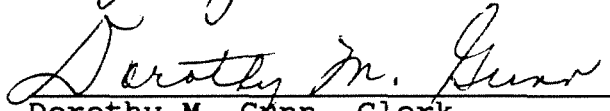
statement of its hearing costs, supported by affidavit, with the Board and with service upon respondent. Within the same 30 days, the Clerk of the Pollution Control Board shall file a statement of the Board's costs, supported by affidavit and with service upon respondent. Such filings shall be entered in Docket B of this matter.

5. Respondent may file a reply or objection to the statements of hearing costs, described in paragraph 4, within 45 days of this order.

IT IS SO ORDERED.

Section 41 of the Environmental Protection Act (415 ILCS 5/41 (1992)) provides for the appeal of final Board orders. The Rules of the Supreme Court of Illinois establish filing requirements. (See also 35 Ill.Adm.Code 101.246 "Motions 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 1st day of July, 1993, by a vote of 7-0.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board