

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
OGLE COUNTY, ILLINOIS
CHANCERY DIVISION

PEOPLE OF THE STATE OF ILLINOIS,)	
<i>ex rel.</i> KWAME RAOUL, Attorney)	
General of the State of Illinois,)	
)	
Plaintiff,)	
)	No.
-vs-)	2020CH35
)	
ADVANCED DISPOSAL SERVICES)	
ORCHARD HILLS LANDFILL, INC.,)	
an Illinois corporation,)	
)	
)	
Defendant.)	

COMPLAINT FOR INJUNCTION AND OTHER RELIEF

Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, *ex rel.* KWAME RAOUL, Attorney General of the State of Illinois, on his own motion and at the request of the Illinois Environmental Protection Agency (“Illinois EPA”), complains of the Defendant, ADVANCED DISPOSAL SERVICES ORCHARD HILLS LANDFILL, INC., as follows:

COUNT I
AIR POLLUTION

1. This Complaint is brought on behalf of the PEOPLE OF THE STATE OF ILLINOIS, by KWAME RAOUL, Attorney General of the State of Illinois, on his own motion and at the request of the Illinois EPA, pursuant to Section 42 of the Illinois Environmental Protection Act (“Act”), 415 ILCS 5/42 (2018).
2. The Illinois EPA is an administrative agency established in the executive branch of State government by Section 4 of the Act, 415 ILCS 5/4 (2018), and charged, *inter alia*, with

the duty of enforcing the Act.

3. Defendant ADVANCED DISPOSAL SERVICE ORCHARD HILLS LANDFILL, INC. (“ADS”) is an Illinois corporation duly authorized to transact business in the State of Illinois.

4. ADS owns and operates the Orchard Hills Landfill (“Landfill”), a municipal solid waste and non-hazardous special waste landfill located at 8290 Illinois Highway 251, Davis Junction, Ogle County, Illinois. The Landfill property consists of approximately 446 acres of land. Highway 251 runs north to south on the east border of the Landfill. Edson Road, a public highway, runs east and west on the north border of the Landfill property, Junction Road, a public highway, runs north and south on the west border of the Landfill property.

5. The Village of Davis Junction lies approximately one-half mile south of the Landfill. The Village of Monroe Center is located on Illinois Highway 72 approximately one mile southeast of the Landfill. The Village of Stillman Valley is located on Illinois Highway 72 approximately five miles southwest of the Landfill. The City of Byron is located on Illinois Highway 72 approximately eight miles southwest of the Landfill.

6. The Landfill contains a single Illinois EPA-permitted waste disposal unit covering approximately 251.1 acres of land. As of the date of filing this Complaint, the Landfill is accepting municipal solid waste and non-hazardous special waste.

7. Municipal solid waste breaks down inside of the Landfill to form various degradation products. Included in these waste degradation products are mixtures of volatile compounds, including hydrogen sulfide, mercaptans, reduced sulfur compounds, methane, and carbon dioxide (collectively “landfill gas”).

8. Hydrogen sulfide, a component of landfill gas, has an odor commonly described as an offensive ‘rotten egg’ odor, and is detectible to humans at concentrations as low as 2 parts per billion in air. The United States Occupational Safety and Health Administration (“OSHA”) considers hydrogen sulfide to be an “extremely hazardous gas”.

9. Unless properly controlled, landfill gas can be emitted into the environment and threaten or cause harm to the public health, safety, property values, and the welfare of persons in the surrounding area. According to the United States Department of Health & Human Services, exposure to landfill gas may result in nausea, headaches, and an increase in asthmatic reactions. Landfill gas and its component compounds may migrate off a landfill site, creating a serious odor nuisance and interfering with the enjoyment of life and property in the vicinity of a landfill.

10. Pursuant to Illinois regulations codified at 35 Ill. Adm. Code 220.220 and 220.230, and Federal Regulations codified at 40 CFR 60.33c, the Defendant is required to, and does, collect and control landfill gas using a landfill gas collection and control system (“GCCS”). The Defendant’s GCCS consists of landfill gas extraction wells, landfill gas burning flares, and a landfill gas-fired electrical generating facility.

11. Landfill gas emissions may be caused by a non-functioning or insufficient landfill gas collection system. When landfill gas collection systems are not functioning properly, or installed or operated improperly, landfill gas migrates up through soil and clay cover materials, increased methane levels can be detected at the surface of a landfill, and landfill gas malodors migrate past the boundary of a landfill.

12. Control of landfill gas also requires installation and maintenance of a suitable clay, soil, or synthetic cover over waste disposal areas of a landfill. If insufficient cover is in place, landfill gas migrates through cover materials to the atmosphere, creating a threat to health and an off-site odor nuisance.

13. “Daily cover” consists of approximately 6 inches of soil, or other Illinois EPA accepted materials, which is placed over an active waste disposal area of a landfill at the end of each operating day. Daily cover is intended to keep birds and other vectors from the waste. Daily cover, by itself, does not effectively prevent the migration of landfill gas to the atmosphere.

14. “Intermediate cover” consists of approximately 12 inches of soil, which is placed on inactive, but not closed, waste disposal areas of a landfill. Intermediate cover is only partially effective as a barrier against landfill gas migration to the atmosphere.

15. “Final Cover” consists of an Illinois EPA-approved multi-layer system designed to minimize migration of water into a landfill, to reduce or eliminate migration of landfill gas, and to minimize erosion. Final cover may consist of a barrier layer, a drainage layer, and an erosion control layer constructed from compacted clay, geo-membrane, and soil. Final cover must be installed when a waste disposal unit is closed. When installed properly, final cover installed over a landfill section can act as a significant barrier to landfill gas migration to the atmosphere.

16. Approximately 110 acres of the Defendant’s 251.1 acres of permitted waste disposal capacity, representing more than 43% of the Landfill’s permitted waste disposal surface area, currently have only daily cover or intermediate cover in place.

17. At various times between January 1, 2019 and the date of filing this Complaint, inspectors from Illinois EPA and the Ogle County Solid Waste Management Department (“Ogle County”) identified landfill gas odors attributable to the Landfill outside of the Landfill boundary.

18. On February 14, 2019, Illinois EPA received a complaint about odors attributed to the Landfill. An Illinois EPA inspector followed up on the odor complaint, and detected landfill gas odors on Edson Road, north of the Landfill. The winds at the time the Illinois EPA inspector detected the landfill gas odors were from the south-southeast.

19. On February 14, 2019, an Ogle County inspector also visited the vicinity of the Landfill. The Ogle County inspector also detected strong landfill gas odors on Edson Road, north and northeast of the Landfill. Winds at the time of detection were from the south-southeast. The landfill gas odors caused the Ogle County inspector to feel lightheaded.

20. On March 4, 2019, an Illinois EPA inspector detected landfill gas odors just outside of the east Landfill entrance on Illinois Highway 251. The winds at the time were from the west.

21. On August 26, 2019, Ogle County received a citizen complaint regarding landfill gas odors from a resident of Byron Illinois living approximately eight miles southwest of the Landfill. The complainant stated that recent landfill gas odors had been disturbing his sleep.

22. On August 26, 2019, an Ogle County inspector visited the Landfill in response to the complaint from Byron. Winds at the time of the complaint were from the east-southeast, and therefore blowing from the Landfill in the direction of Byron. The inspector first traveled to Byron, where he detected landfill gas odors. The inspector then traced the odors back in the

direction of the Landfill. On Junction Road, near the west border of the Landfill, the inspector detected strong landfill gas odors at three different off-site locations.

23. On September 6, 2019, an Illinois EPA inspector again detected noxious landfill gas odors on Highway 251, outside of the east border of the Landfill. The winds at the time were from the west-northwest, and therefore blowing from the Landfill in the direction of Highway 251.

24. On December 3, 2019, an Illinois EPA inspector again detected noxious landfill gas odors on Highway 251 outside of the east border of the Landfill. The winds at the time were from the southwest, and therefore blowing from the Landfill in the direction of Highway 251.

25. Between July 31, 2019 at the date of filing this Complaint, Illinois EPA and Ogle County have received at least 21 complaints from residents of Byron, Illinois, complaining of noxious landfill gas odors attributable to the Landfill.

26. Between March 19, 2019 and the date of filing this Complaint, Illinois EPA and Ogle County have received at least 12 complaints from residents of Davis Junction, Illinois complaining of noxious landfill gas odors attributable to the Landfill.

27. Between March 21, 2019 and the date of filing this Complaint, Illinois EPA and Ogle County have received at least 4 complaints from residents of Monroe Center, Illinois, complaining of noxious landfill gas odors attributable to the Landfill.

28. Between August 12, 2019 and the date of filing this Complaint, Illinois EPA and Ogle County have received at least 5 complaints from residents of Stillman Valley, Illinois, complaining of noxious landfill gas odors attributable to the Landfill.

29. Some of the complainants reported to Illinois EPA and Ogle County that the

landfill gas emissions interrupted sleep and prevented or deterred the complainant from being outside and kept them from enjoying the use of their property. Many complainants reported that the worst odors occurred at night or in the early morning hours.

30. To the date of filing this Complaint, the Defendant has failed to take action to eliminate the emission of landfill gas from the Landfill and the spread of landfill gas odors to the communities near the Landfill.

31. To the date of filing this Complaint, the emission of landfill gas from the Landfill continues to interfere with the health, welfare and enjoyment of life and property of off-site residents.

32. Section 9(a) of the Act, 415 ILCS 5/9(a) (2018), provides, as follows:

No person shall:

- a. Cause or threaten or allow the discharge or emission of any contaminant into the environment in any State so as to cause or tend to cause air pollution in Illinois, either alone or in combination with contaminants from other sources, or so as to violate regulations or standards adopted by the Board under this Act;

33. Section 201.141 of the Illinois Pollution Control Board (“Board”) Air Pollution regulations, 35 Ill. Adm. Code 201.141, provides, as follows:

Prohibition of Air Pollution

No person shall cause or threaten or allow the discharge or emission of any contaminant into the environment in any State so as, either alone or in combination with contaminants from other sources, to cause or tend to cause air pollution in Illinois, or so as to violate the provisions of this Chapter, or so as to prevent the attainment or maintenance of any applicable ambient air quality standard.

34. Section 3.315 of the Act, 415 ILCS 5/3.315 (2018), provides, as follows:

“Person” is any individual, partnership, co-partnership, firm, company, limited liability company, corporation, association, joint stock company, trust, estate, political subdivision, state agency, or any other legal entity, or their legal representative, agent or assigns.

35. The Defendant is a “person” as that term is defined in Section 3.315 of the Act, 415 ILCS 5/3.315 (2018).

36. Section 3.165 of the Act, 415 ILCS 5/3.165 (2018), provides, as follows:

"Contaminant" is any solid, liquid, or gaseous matter, any odor, or any form of energy, from whatever source.

37. Landfill gas and its constituents, including hydrogen sulfide and other reduced sulfur compounds, carbon dioxide, and methane, is a “contaminant” as that term is defined in Section 3.165 of the Act, 415 ILCS 5/3.165 (2018).

38. Section 3.115 of the Act, 415 ILCS 5/3.115 (2018), provides, as follows:

"Air pollution" is the presence in the atmosphere of one or more contaminants in sufficient quantities and of such characteristics and duration as to be injurious to human, plant, or animal life, to health, or to property, or to unreasonably interfere with the enjoyment of life or property.

39. The Defendant caused, threatened, or allowed the discharge of landfill gas from the Landfill and into the environment off-site. The Defendant’s landfill gas emissions were and are injurious to human life and health, in that the emissions interfered with sleep and unreasonably interfered with nearby residents’ enjoyment of life or property, in that these residents were prevented from sleeping peacefully in their homes, and from going outside to work on and/or enjoy their property. The landfill gas emissions also created a significant and offensive odor nuisance in residential areas near the Landfill. The emission of landfill gas from the Landfill constitutes “air pollution” as that term is defined in Section 3.115 of the Act, 415

ILCS 5/3.115 (2018).

40. By causing and allowing the discharge of landfill gas from the Landfill as described herein, the Defendant thereby caused, threatened or allowed air pollution, and thereby violated Section 9(a) of the Act, 415 ILCS 5/9(a) (2018), and 35 Ill. Adm. Code 201.141.

41. Violations of the pertinent environmental statutes will continue unless and until this Court grants equitable relief in the form of preliminary and, after trial, permanent injunctive relief.

WHEREFORE, Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, prays that this court enter a preliminary injunction, and, after trial, permanent injunction, and an order in favor of Plaintiff and against the Defendant, ADVANCED DISPOSAL SERVICES ORCHARD HILLS LANDFILL, INC., on Count I:

1. Finding that the Defendant has violated Section 9(a) of the Act, and 35 Ill. Adm. Code 201.141;

2. Enjoining the Defendant from further violations of Section 9(a) of the Act, and 35 Ill. Adm. Code 201.141;

3. Ordering the Defendant to take immediate action to prevent the emission of landfill gas from the Landfill;

4. Assessing against the Defendant, pursuant to Section 42(a) of the Act, a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each violation of the Section 9(a) of the Act, and 35 Ill. Adm. Code 201.141, and an additional penalty of Ten Thousand Dollars (\$10,000.00) for each day of violation;

5. Ordering the Defendant to pay all costs, pursuant to Section 42(f) of the Act, including attorney fees and all expert witness and consultant fees expended by the State in its

pursuit of the action; and

6. Granting such other relief as this Court deems appropriate and just.

COUNT II
FAILURE TO OPERATE COLLECTION AND CONTROL SYSTEM
TO PREVENT MALODORS

1-35. Plaintiff realleges and incorporates by reference herein paragraphs 1 through 31, paragraphs 34 through 35, and paragraphs 38 through 39, of Count I, as paragraphs 1 through 35 of this Count II.

36. Section 21(d)(2) of the Act, 415 ILCS 5/21(d)(2) (2018), provides, in pertinent part, as follows:

No person shall:

* * *

(d) Conduct any waste storage, waste-treatment, or waste disposal operation:

* * *

(2) In violation of any regulations or standards adopted by the Board under this Act...

37. Section 3.535 of the Act, 415 ILCS 5/3.535 (2018), provides, in pertinent part, as follows:

“WASTE” means any garbage...or any other discarded material, including any solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining and agricultural operations, and from community activities....

38. Section 3.385 of the Act, 415 ILCS 5/3.385 (2018), provides, as follows:

“REFUSE” means waste.

39. The municipal solid waste and special waste disposed of at the Landfill is

“garbage” and “discarded material”, and therefore “waste” as that term is defined by Section 3.535 of the Act, 415 ILCS 5/3.535 (2018), and therefore also “refuse” as that term is defined by Section 3.385 of the Act, 415 ILCS 5/3.385 (2018).

40. The Defendant accepted and disposed of waste at the Landfill, and therefore conducted a “waste disposal operation” as that term is used in Section 21(d) of the Act, 415 ILCS 5/21(d) (2018).

41. Pursuant to authority granted under the Act, the Board has promulgated regulations related to operation of municipal solid waste landfills, codified at 35 Ill. Adm. Code Part 811 (“Board Waste Disposal regulations).

42. Section 811.301 of the Board Waste Disposal regulations, 35 Ill. Adm. Code 811.301, provides, in pertinent part, as follows:

811.301 Scope and Applicability

In addition to the requirements of Subpart A, the standards of this Subpart apply to all landfills in which chemical and putrescible wastes are to be placed, except as otherwise provided in 35 Ill. Adm. Code 817.

43. Section 810.103 of the Board Waste Disposal regulations, 35 Ill. Adm. Code 810.103, provides the following definitions:

* * *

“Operator” means the person responsible for the operation and maintenance of a solid waste disposal facility.

* * *

“Malodor” means an odor caused by *one or more contaminant emissions into the atmosphere from a facility that is in sufficient quantities and of such characteristics and duration as to be described as malodorous and which may be injurious to human, plant, or animal life, to health, or to property, or may*

unreasonably interfere with the enjoyment of life or property. [415 ILCS 5/3.115]
(defining “air pollution”)

* * *

“Putrescible waste” means a solid waste that contains organic matter capable of being decomposed by microorganisms so as to cause a malodor, gases, or other offensive conditions, or which is capable of providing food for birds and vectors. Putrescible wastes may form a contaminated leachate from microbiological degradation, chemical processes, and physical processes. Putrescible waste includes, but is not limited to, garbage, offal, dead animals, general household waste, and commercial waste. All solid wastes that do not meet the definition of inert or chemical wastes will be considered putrescible wastes.

44. The Defendant is responsible for the operation of the Landfill, and is an “operator” of the Landfill as that term is defined in Section 810.103 of the Board Waste Disposal regulations, 35 Ill. Adm. Code 810.103.

45. The municipal solid waste, garbage, and special waste disposed of within the Landfill is “putrescible waste” as that term is defined in Section 810.103 of the Board regulations, 35 Ill. Adm. Code 810.103. The Defendant is an operator of a putrescible waste landfill.

46. Subpart C of the Board Waste Disposal regulations, 35 Ill. Adm. Code Part 811, Subpart C, provides, in pertinent part, as follows:

Section 811.311 Landfill Gas Management System

a) The operator shall install a gas management system if any one of the following conditions are met:

* * *

3) Malodors caused by the unit are detected beyond the property boundary; or

* * *

- d) Standards for Gas Collection Systems
 - 1) Gas collection systems may be installed either within the perimeter of the unit or outside the unit.
 - 2) The operator shall design and operate the system so that the standards of subsections (a)(1), (a)(2), and (a)(3) will not be exceeded.

47. The landfill gas odors resulting from the emission of landfill gas from the Landfill are “malodors” as that term is defined in Section 810.103 of the Board Waste Disposal regulations, 35 Ill. Adm. Code 810.103. Malodors have and continue to be detected beyond the Landfill boundaries.

48. Section 811.107 of the Board Waste Disposal regulations, 35 Ill. Adm. Code 811.107, provides, in pertinent part, as follows:

Section 811.107 Operating Standards

* * *

- e) Maintenance. The operator must maintain and operate all systems and related appurtenances and structures in a manner that facilitates proper operations in compliance with this Part.

47. The Defendant failed to design and operate the GCCS system at the Landfill in such a way as to prevent landfill gas malodors from leaving the Landfill, thereby allowing landfill gas malodors outside of the boundary of the Landfill.

48. By failing to design a landfill gas management system to prevent off-site emissions, and by failing to operate the GCCS at the Landfill to prevent noxious odors from migrating beyond the boundary of the Landfill, the Defendant violated Section 811.311(d) of the

Board Waste Disposal regulations, and thereby also violated Section 21(d)(2) of the Act, 415 ILCS 5/21(d)(2) (2018).

49. The Defendant failed to maintain the GCCS at the Landfill to provide for capture and control of all landfill gas, thereby allowing violations of 35 Ill. Adm. Code 811.311. The Defendant thereby violated Section 811.107(e) of the Board Waste Disposal regulations, and thereby also violated Section 21(d)(2) of the Act, 415 ILCS 5/21(d)(2) (2018).

50. Violations of the pertinent environmental statutes will continue unless and until this Court grants equitable relief in the form of preliminary and, after trial, permanent injunctive relief.

WHEREFORE, Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, prays that this court enter a preliminary injunction, and, after trial, permanent injunction, and an order in favor of Plaintiff and against the Defendant, ADVANCED DISPOSAL SERVICE ORCHARD HILLS LANDFILL, INC., on Count II:

1. Finding that the Defendant has violated Section 21(d)(2) of the Act, and 35 Ill. Adm. Code Sections 811.311(d) and 811.107(e);

2. Enjoining the Defendant from further violations of Section 21(d)(2) of the Act, and 35 Ill. Adm. Code Sections 811.311(d) and 811.107(e);

3. Ordering the Defendant to take immediate action to install and operate a gas management system capable of preventing off-site landfill gas odors;

4. Assessing against the Defendant a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each and every violation of Section 21(d)(2) of the Act, and 35 Ill. Adm. Code Sections 811.311(d) and 811.107(e), and an additional penalty of Ten Thousand Dollars (\$10,000.00) for each day of violation;

5. Ordering the Defendant to pay all costs, pursuant to Section 42(f) of the Act, including attorney fees and all expert witness and consultant fees expended by the State in its pursuit of the action; and

6. Granting such other relief as this Court deems appropriate and just.

PEOPLE OF THE STATE OF ILLINOIS
ex rel. KWAME RAOUL,
Attorney General of the
State of Illinois

MATTHEW J. DUNN, Chief
Environmental Enforcement/Asbestos
Litigation Division

BY: /s/ ELIZABETH WALLACE
ELIZABETH WALLACE, Chief
Environmental Bureau
Assistant Attorney General

Of Counsel:

Christopher Grant
Senior Assistant Attorney General
Karen Howard
Assistant Attorney General
Environmental Bureau
69 W. Washington Street, Suite 1800
Chicago, IL 60602
(312) 814-5388
(312) 814-5361

Primary e-mail address: cgrant@atg.state.il.us

Secondary e-mail address: mcacaccio@atg.state.il.us