

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

EXIT C & D LANDFILL, INC.	:	JUDGES:
	:	Hon. W. Scott Gwin, P.J.
	:	Hon. Sheila G. Farmer, J.
Plaintiff-Appellant	:	Hon. Julie A. Edwards, J.
	:	
-vs-	:	
	:	Case No. 2002CA00311
THE STARK COUNTY, OHIO	:	
BOARD OF HEALTH	:	
	:	
Defendant-Appellee	:	<u>O P I N I O N</u>

CHARACTER OF PROCEEDING: Administrative appeal from the Environmental Review Appeals Commission, Case No. ERAC765158

JUDGMENT: Affirmed

DATE OF JUDGMENT ENTRY: April 28, 2003

APPEARANCES:

For Plaintiff-Appellant
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For Defendant-Appellee
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Gwin, P. J.,

{¶1} Exit C & D Landfill, Inc. appeals a judgment of the Environmental Review Appeals Commission which affirmed a decision by the Stark County Combined General Health District Board of Health, revoking the landfill's 2002 construction and demolition debris license. The Landfill assigns a single error to the Commission:

{¶2} "THE ENVIRONMENTAL REVIEW APPEALS COMMISSION ERRED IN FINDING THAT THE STARK COUNTY, OHIO, BOARD OF HEALTH'S JULY 17, 2002, REVOCATION OF APPELLANT EXIT C&D'S ANNUAL LICENSE WAS BOTH REASONABLE AND LAWFUL BECAUSE APPELLANT EXIT C & D LANDFILL HAD BEEN IN SUBSTANTIAL COMPLIANCE WITH THE CONSTRUCTION AND DEMOLITION DEBRIS STATUTES AND REGULATIONS PRIOR TO AND DURING CALENDAR YEAR 2002.

{¶3} The Environmental Review Appeals Commission, hereinafter ERAC, reviewed the adjudication hearing conducted by the Board of Health. The Commission found it's review was confined to the record, as certified by the Board. Based upon the record, ERAC made extensive findings of fact and conclusions, as outlined below.

{¶4} Appellant Landfill operates a construction and demolition debris landfill located at 7099 Fairhill Street, S.E., Waynesburg, Stark County, Ohio. Pursuant to R.C. 3714.06 and OAC Chapter 3745-400, any person wishing to establish, modify, operate, or maintain a construction and demolition debris facility must obtain an annual construction and demolition debris facility installation and operation license from either the appropriate health district or from the Director of the Ohio EPA. Appellee Stark County Combined General Health District Board of Health is the agency designated to inspect, license, and

enforce standards governing the construction and demolition debris facilities located within its district, including the site operated by the appellant Landfill. ERAC found appellant has obtained annual licenses to operate the site since at least 1991, with the most recent one issued by appellee Board of Health in January 2002. On July 17, 2002, the Board of Health revoked the license, and gave rise to this proceeding.

{¶5} ERAC's decision summarizes the rather extensive evidence in the certified record. ERAC found correspondence from January 2002, from the Environmental Health Division of the Board of Health to appellant Landfill, noting the violation issued as a result of a December 28, 2001 inspection. The letter alleged waste is still present outside of the licensed area, constituting a violation of OACA 3745-400-11. The letter notified appellant it had until February 1, 2002, to fully comply with the order. There was also an inspection checklist dated January 9, 2002, which indicated solid waste was commingled with construction debris materials.

{¶6} ERAC reviewed correspondence dated February 20, 2002, from the Environmental Health Division to appellant Landfill regarding a February 7, 2002, inspection wherein nine violations were detailed. ERAC's findings of fact noted appellant pointed out the number of violations in the corresponding inspection checklist were inflated. ERAC also noted appellant did not argue any of the violations did not actually occur, but, only the checklist was not specific.

{¶7} An inspection checklist dated February 15, 2002, again stated there were loads containing commingled solid waste, violations of OAC3745-400-11 (F), 11-(G) and 11- (L).

{¶8} ERAC discussed correspondence dated February 27, 2002, from the Board to appellant Landfill regarding a February 20, 2002, inspection at which eleven violations were documented. The letter advised there was a considerable amount of solid waste

commingled in the loads which had been deposited at the working face. The Board of Health noted solid waste needs to be immediately removed and taken to a licensed solid waste facility. The Board advised appellant to set up a marked unloading zone with pickers to remove any solid waste to eliminate the problem. Additionally, the Board of Health noticed a leachate outbreak was observed along the southeastern portion of the cell. The letter documented the Board of Health had verbally ordered appellant to immediately contain, manage, and repair the leachate outbreak.

{¶9} On February 25, 2002, the Unit Manager of Environmental Health for the Health Department sent a memorandum to the Environmental Health Director regarding an inspection on February 22, 2002. Again, the memorandum set forth eleven violations. In turn, the Director notified appellant Landfill if the matter was not immediately corrected, he would refer the matter to the Board of Health for suspension and/or revocation of the facility's operating license.

{¶10} ERAC reviewed a memorandum from the Stark County Health Commissioner regarding a hearing the Health Department held on February 27. At the hearing, testimony was presented that massive amounts of construction and demolition waste with solid waste commingled was being disposed of at appellant Landfill, and major pieces of waste handling equipment had broken down, so the facility could not properly manage the waste. Conditions at appellant's Landfill were described by the sanitarian as deplorable. At the conclusion of the hearing, the Board agreed to implement certain measures to correct the existing violations, and in return the facility would voluntarily close until brought into compliance.

{¶11} An inspection checklist of March 12, 2002, stated violations of February 21, 2002, had been corrected, and appellant Landfill was in substantial compliance with construction and demolition debris regulations and laws. However, correspondence dated

March 25, 2002, stated seven violations noted on March 22, 2002, had to be addressed immediately and maintained on a daily basis. On April 1, 2002, the Environmental Health Unit outlined three more violations noted in a March 27, 2002 inspection. Correspondence dated April 8, 2002, noted four violations, and correspondence dated May 6, 2002, two violations. The Environmental Health Unit inspected the facilities on May 8, 2002, and found solid waste disposal violations, and ordered appellant to immediately remove the solid waste from the landfill. On May 9, 2002, inspectors found the waste they had ordered removed was still in the working face and partially covered. One of the inspectors testified later although he had ordered the material removed, when he went back twenty-four hours later, appellant Landfill had covered seventy-five percent of it with receipts from the next day.

{¶12} On May 14, 2002, the Board of Health sent appellant a history of non-compliance dating from 1998, which presented a serious threat to public health and to the environment. The notice advised appellant the Health Commissioner would conduct a hearing for possible revocation of its license.

{¶13} At the hearing, the parties disputed the amount of solid waste at issue, with appellant alleging it may have been approximately fifteen percent, and the Environmental Health Director testifying it was more like fifty percent. Appellant maintained there had been an allowable amount of solid waste in its landfills, but recently, the EPA had adopted a zero tolerance policy. The Environmental Health Director disputed this, and advised there had never been an acceptable solid waste level. The Health Director testified he believed the facility was incapable of handling the volume it needed to keep it financially secure while operating within the parameters of the Code. The Director testified when appellant was closed for cleanup, it was cleaned up. But when it resumed operations, its problems resumed. The Board unanimously resolved to revoke appellant's license, for not

operating the landfill in accordance with Ohio Rules, lack of management over the landfill and its employees, a large number of severe violations of the Ohio Rules between February of 2002, and May of 2002, of which many were repeat violations.

{¶14} ERAC found pursuant to R.C. 3745.05, its standard of review was to determine whether the revocation of the license was unlawful or unreasonable. ERAC found the evidence demonstrated the facility had been cited for numerous and varied violations of OAC Chapter 3745-400. ERAC found OAC Chapter 3745-37-03 provides a license shall not be issued unless the facility has been in substantial compliance with all applicable statutory and regulatory provisions. ERAC found the Board did not act unreasonably or unlawfully in finding the numerous violations justified the revocation of the license, in light of repeated opportunities to correct the violations and warnings given regarding potential consequences of not correcting them.

{¶15} Appellant argued to ERAC it was being treated more stringently than other landfills in the Stark County Board of Health district and the board's action was unlawful and unreasonable. ERAC found the record before it clearly demonstrated appellant had sufficient violations upon which the Board could revoke its license. For this reason, ERAC held the Board's revocation of appellant's license was reasonable and lawful, and must be affirmed.

{¶16} R.C. 3745.06 sets forth our standard of review. Pursuant to statute, we are confined to the record, and shall affirm the order of ERAC if there is reliable, probative, and substantial evidence to support it, and if it is in accord with law.

{¶17} We have reviewed the record, and we find there is substantial reliable and probative evidence to support the order of ERAC, based upon significant evidence of appellant's non-compliance, resulting in a public health threat. We further find ERAC was correct in concluding the revocation was lawful because the Board of Health acted in

accordance with its authority provided by R.C. 3714.10.

{¶18} We find the record supports the decision of ERAC, and this court must affirm.

Accordingly, the assignment of error is overruled.

{¶19} For the foregoing reasons, the judgment of the Environmental Review Appeals Commission is affirmed.

By Gwin, P.J.,

Farmer, J., and

Edwards, J., concur

Topic: Administrative appeal - Landfill Licensing