

ILLINOIS POLLUTION CONTROL BOARD
September 17, 1987

JOHN DALEY, WILLIAM O. LIPINKSI,)
TIMOTHY DEGNAN, and PATRICK HUELS)
for themselves and on behalf of)
the residents of the 21st)
Representative District, the 5th)
Congressional District, and the)
11th Senatorial District of the)
State of Illinois, and the 11th)
Ward of the City of Chicago,)
Complainants,)
v.) PCB 87-132
THE CITY OF CHICAGO, a Municipal)
Corporation,)
Respondent.)

ORDER OF THE BOARD (by J. Anderson):

On August 26, 1987, the Complainants, John Daley, William O. Lipinksi, Timothy Degnan and Patrick Huels, filed a Complaint against the Respondent, the City of Chicago, and a Motion for Expedited Hearing and Other Relief. On September 8, 1987, the Respondent filed a Response in opposition to Complainants' motion. On September 11, 1987 the Complainants filed a Reply to the Respondent's Response To The Motion For Expedited Hearing and Other Relief, which the Board accepted by Order of September 11.

The Complainants charge the City with various violations of the Act and the Board's regulations governing disposal and manifesting of non-hazardous waste. The site at issue is a sanitary landfill, commonly known as "Stearn's Quarry", located at 29th and Halsted Streets (2900 South Poplar). The site is located within the respective legislative district served by each complainant. The complaint alleges various failures to comply with operating requirements, including those dictating a) the manner of placement, spreading, and compacting of refuse, b) employment of dust suppression techniques c) maintenance of sufficient equipment and personnel at the site d) placement and depth of daily and intermediate cover. The complaint also alleges that special waste--incinerator ash--was accepted at the site without a manifest, and that copies of manifests for all loads of incinerator ash were not submitted to the Illinois Environmental Protection Agency (Agency).

In the motion which accompanied the complaint, complainants assert that:

"The circumstances described in the Complaint pose substantial immediate dangers to the environment and to the public health of residents surrounding Stearn's Quarry.

As a result of the aforesaid danger, the public interest requires a hearing before the Board on an expedited basis.

In the alternative, the subject sanitary landfill should be sealed to prevent the continued contamination of the environment and/or dangers to the public health."

The August 26 complaint and motion contained no factual information in support of complainant's various allegations. However, in their September 11 reply to the City's September 8 response, complainants provided some documentary support for their claims that activities at Stearn's Quarry present "substantial immediate dangers to the environment and to the public health of [nearby] residents." This supporting information consists of photocopies of what appear to be results of Agency analyses of the cadmium and lead content of samples of incinerator ash and leachate taken from the Stearn's Quarry site on May 8, 1987. These indicate lead levels in the ash (but not the leachate) of 22.00 mg/l, which is in excess of the EP Toxicity Value of 5.0 mg/l; cadmium levels in both the ash and the leachate are below the 1.0 mg/l EP Toxicity Value for cadmium. Complainants have also presented a summary sheet which purports to show results of 5 other tests of ash from the Northwest Incinerator for lead and cadmium performed by either USEPA or the Agency between 1981 and 1987.

In its response to the complainants' motion, the City submitted information concerning the history and operations of the site by way of the affidavit of John J. Halpin, Commissioner of the City's Department of Streets and Sanitation. Also provided were copies of City's 1975 application for permit, the 1975 permit issued by the Agency, and an August 7 letter from the Agency to Commissioner Halpin listing "apparent violations" noted by the Agency in an August 6, 1987 inspection of the Stearn's Quarry site.

In 1975, the City received a permit from the Illinois Environmental Protection Agency to operate Stearn's Quarry as a sanitary landfill for the disposal of incinerator ash and non-combustible construction rubble and debris. The City asserts that it ceased to dispose of construction debris at the site on or about June 1, 1987. However, since 1975, the Stearn's Quarry

site has continuously served as the sole depository of the ash from the City's Northwest incinerator Plant. The City notes that the Incinerator processes household refuse from 19 of the City's wards, which represents at least 25% of the refuse collected by the Department. The Incinerator also disposes of refuse required by federal law to be incinerated: refuse generated on international flights landing at O'Hare Airport, and contraband seized by a federal agency. Steam generated as a result of waste combustion at the Incinerator is provided, by contract, to the nearby Brach's candy factory for generation of power to supply the factory's needs; use of fuel gas to generate the required steam would cost the City at least \$9,000 per day.

Disposal of the ash from the Incinerator at alternative disposal sites would cost the City an estimated \$4 million for the remainder of 1987, and an estimated \$15 million for calendar year 1988. The City has not estimated costs for alternative landfill disposal of wastes attendant upon even a temporary closure of the Incinerator. It notes, however, that the 1,500 tons of refuse brought daily to the Incinerator represents the daily collection of over 200 garbage trucks, and asserts that even a short disruption of service "would have a ripple effect that would impair garbage collection for a vast segment of the City of Chicago".

The City asserts that the instant complaint "copies" the "apparent violations" noted in the Agency's August 7 letter. The City states that until August 7, 1987 the Agency "had not objected to the procedures used at Stearn's Quarry". The City further states that in response to the Agency's concerns, that it is in the process of letting a contract (on an expedited basis) to an engineering firm for the purpose of reviewing and implementing various Agency recommendations, that it has been covering its ash-hauling trucks since September 2 to prevent spillage, and that it recognizes the need for dust abatement at the site. The City further reports that it will implement a "comprehensive testing protocol at the Stearn's Quarry and Northwest Incinerator sites" to complement testing already performed at both sites; the City notes that analysis of soil samples gathered at Stearn's Quarry prior to August 7 will be completed and available by the end of September.

The essence of the City's response to complainants alternative motions is that:

"The City is committed to insuring the safety and health of residents living around the Stearn's Quarry. The discussions currently occurring between the City and IEPA will result in implementation of procedures conforming to state regulations. The administrative complaint of the Petitioners merely

repeats the problems previously noted by IEPA and is dependent upon further analysis by IEPA of the listed "apparent violations". Given the fact, an expedited hearing in this proceeding is unnecessary. Indeed, postponing any hearing until the issues here are clarified by IEPA would be the prudent course. The necessity of any hearing may well be obviated by a cooperative plan between IEPA and the City correcting the apparent problems at issue here. Naturally, Petitioner's proposed alternative relief of sealing Stearn's Quarry pending hearing is totally unjustified and would wreak havoc with the City's garbage collection procedures, potentially endangering many more people than are purported to be at risk by Petitioners.

The Board reminds the parties that the sole facts before it in this case are those which have been introduced into this record by them; any information which may exist in the files of the parties, the Agency, or the USEPA is outside the Board's knowledge unless and until it is introduced into this record accompanied by sworn testimony. None of the "information" supplied by the complainants is supported by affidavit or other indicia of accuracy. The respondent's information is supported by affidavit and, therefore, must be afforded greater weight. Based on the record before the Board, the Board denies complainant's least-favored and alternative relief request: that the site be "sealed" or the respondent otherwise ordered to cease operations pending a hearing in this matter. The uncontested information supplied by the City leads the Board to conclude that disruption of its program for collection and disposal of 25% of the garbage daily generated by the City could have a major economic impact on the City. However, and more importantly, such disruption would pose an immediate threat to the public health of the City's residents, as uncollected and/or improperly stored garbage provides a harborage for potentially disease-carrying vectors such as rats.

The Board does not, however, discount the complainants' concerns for the welfare of their constituents or their observations that operations at the Stearn's Quarry site must be conducted in an environmentally sound manner consistent with the provisions of the Act and Board regulations. The Board will accordingly direct its Hearing Officer to expedite the scheduling of hearing in this matter.

In so doing, the Board wishes to make some practical observations. Title VIII of the Environmental Protection Act, Ill. Rev. Stat. ch. 111 1/2, pp. 1030-1034, provides that hearings in enforcement actions must be preceded by a 21-day notice of hearing via newspaper as well as individual mail notice to specified individuals. To allow for administrative processing

of required notices, the Board needs a minimum 30-day "lead time" before the date of the hearing scheduled by the Hearing Officer after consultation with the parties.


The Board also observes that in citizens' enforcement actions, such as this one, the pre-hearing discovery process may be more than usually crucial, if for no other reason than the fact that citizen complainants often do not otherwise have access to witnesses and documentation which they need to bear their burden of proving each of its allegations. As each case differs, the Board cannot make any accurate "guesstimate" at this stage of the proceedings as to what course any discovery must take.

For these reasons, the Board will not at this time specify any date by which hearing must be scheduled and held. The Board will, however, direct its Hearing Officer to begin to confer with the parties no later than September 21, 1987 for the purpose of establishing a reasonable, but expedited, schedule for discovery and hearing, and to enter an Order setting such dates no later than October 2, 1987.

IT IS SO ORDERED.

Board Member Bill S. Forcade concurred.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 17th day of September, 1987, by a vote of 6-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board