

ILLINOIS POLLUTION CONTROL BOARD
October 14, 1982

ILLINOIS ENVIRONMENTAL PROTECTION)	
AGENCY,)	
Complainant,)	
)	
v.)	PCB 81-98
)	
WASTELAND, INC., an Illinois)	
Corporation, VERNON LAMOREAUX,)	
DENNIS LAMOREAUX, ROGER PEMBLE)	
and WASTE RESOURCES CORPORATION,)	
an Illinois Corporation,)	
)	
Respondents.)	

ORDER OF THE BOARD (by J.D. Dumelle):

On September 30, 1982 the Illinois Environmental Protection Agency (Agency) filed a motion to clarify or modify the Board's August 26, 1982 Order in this matter. No response was filed. The motion to modify is hereby granted in part and the motion to clarify is granted.

In making these motions the Agency has indicated a concern that the Board's August 26, 1982 Order is not final for purposes of enforcement through the Circuit Court, and that it "is probably not appealable." This concern results from the interaction of Section 41 of the Environmental Protection Act (Act), which limits judicial review of Board Orders to "final Orders or determinations," par. 3-101 of the Administrative Review Act (ARA) which defines "administrative decision," and Supreme Ct. Rule 335(h)(2), which applies that definition to Appellate Court review of Board actions.

In the Board's August 26, 1982 Order, several actions are required. First, a penalty is to be paid. Second, a bond or other security is to be obtained. Third, Respondents are to cease and desist. Fourth, the operating permit is revoked. Fifth, the site is to be covered. Sixth, a hydrogeologic survey is to be performed. Seventh, a monitoring program is to be established including installation of leachate monitoring wells. Eighth, remedial actions are to be taken and the site is to be permanently closed.

There should be no question that the first seven of these actions are final determinations. Proceedings before the Board have been terminated and the period for reconsideration has passed. The sole reason for the Board's retention of jurisdiction was for a determination of whether it is necessary to exhume the materials improperly disposed of at the landfill site. In this regard the Board notes that the landfill site and the paper recovery site are

to be considered a single site for that purpose, i.e. as regards Condition 8 of the August 26, 1982 Order.

The Agency argues that under Condition 8 a permit applicant could "file a perfunctory application, obtain a denial, and quit without appealing to the Board," thereby leaving no "adequate remedy." Such an action would, of course, violate the Order that a permit be obtained within 180 days and could be enforced through the Circuit Court. However, such a course places ultimate oversight responsibilities with the Circuit Court rather than with the Board, which was the reason for the Board's retention of jurisdiction.

The Agency points out that the Board's goal can be accomplished through a "contingent exhumation Order" whereby failure to obtain the required permit would result in a requirement that the materials be exhumed. That mechanism allows Respondents to demonstrate to the Agency through the permitting process that exhumation is unnecessary, and the Agency's determination of whether to approve or deny that permit would be appealable to the Board, thus retaining Board oversight.

The difficulty with the Agency's suggestion, however, is that the decision on the necessity of exhumation would be made at the same time as the decision as to what constitutes an adequate monitoring and interim closure plan. Thus the Agency would not have the benefit of the monitoring results prior to its exhumation determination; nor would the Board have such information before it for any appeal of that permitting decision. However, the Board finds merit in the suggestion that continued Board oversight be accomplished through its permit review powers rather than through the retention of jurisdiction.

Therefore, the Board will modify its prior Order to establish a mechanism whereby the exhumation decision can be based upon complete monitoring information while retaining its oversight through its permit review powers.

The Board notes that the time periods established in this modified Order reflect the statutory requirements for permit review, and that while a more expeditious schedule would be desirable, these time periods are required to protect Respondents' due process rights. On the other hand, the Board will look with disfavor upon any extension of these dates without good cause.

The Board hereby modifies its August 26, 1982 Order in this matter in the following respects:

1. Condition 7 is modified to read: "Operating Permit No. 1976-13-OP is hereby revoked."
2. Condition 11 is deleted as is the second to last sentence on page 27 of the corrected Opinion referring to the retention of jurisdiction.

That sentence will be replaced with the following:
It is the intent of the Board in framing the following Order that appropriate remedies be achieved in an expeditious and orderly manner.

3. Condition 8 is deleted and the following is substituted:
 8. Respondents shall remove all unpermitted refuse from both the Landfill and the Paper Recovery Sites within one year unless a permit is obtained from the Agency within 335 days of the date of this Order to allow remedial monitoring measures to ensure that the environment is protected while information is gathered to determine whether exhumation of the unpermitted materials is required.
 - a. The Respondents, if they apply for such a permit, shall apply within 120 days of the date of this Order.
 - b. Such application for a permit shall include but not be limited to:
 - i. Installation of an adequate system of leachate monitoring wells and monitoring programs;
 - ii. Installation of adequate gas vents and flares and an adequate monitoring system; and
 - iii. Appropriate steps to isolate and contain combustible refuse so as to prevent the spread of fires.
 - c. The term of permit if granted, shall be the minimum period required to obtain meaningful results from the monitoring program plus 120 days.
 - d. At least 90 days prior to the expiration of such permit, if granted, Respondents shall apply for a permit for final closure of the sites.
 - e. The Respondents, if they have not obtained a permit from the Agency within 335 days of the date of this Order to establish a monitoring program, shall file within 365 days of the date of this Order a plan and schedule acceptable to the Agency with the Agency for the exhumation, removal and disposal of the material.
 - f. Unless a permit for final closure of the sites is obtained within 215 days of the date of application Respondents shall within 235 days of the date of application file a plan and schedule

acceptable to the Agency with the Agency for exhumation, removal and disposal of the material.

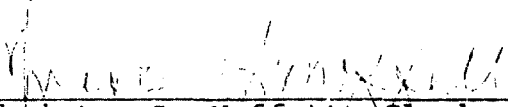
4. Condition 10 (a) is deleted and the following is substituted:

- 10 a. Completed a hydrogeological survey of both the Landfill and the Paper Recovery Sites performed by a registered engineer, engineering firm, or other qualified professional.

IT IS SO ORDERED.

Board Member N. Werner abstained.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 14th day of October, 1982 by a vote of 4-1.



Christan L. Moffett, Clerk
Illinois Pollution Control Board