ILLINOIS POLLUTION CONTROL BOARD
November 14, 1972

ENVIRONMENTAL PROTECTION AGENCY	)	
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	)	
v.	)	# 72-329
	)	
	)	
VILLAGE OF WEST SALEM	)	

Thomas A. Cengel, Assistant Attorney General, for the Environmental Protection Agency

Paul A. Croegaert and William Bowen, for the Village of West Salem

Opinion of the Board (by Mr. Currie):

The Village of West Salem ("Respondent") stands charged with numerous violations of the Illinois Environmental Protection Act ("Act") and the Rules and Regulations For Refuse Disposal Sites and Facilities ("Rules") in the operation of a landfill site located a mile and a half from the Village in Edwards County. Complaint was filed on August 7, 1972 and public hearing on the charges was conducted on October 4, 1972.

Evidence indicated that the Village had never obtained a permit from the State of Illinois to operate the site (R. 71).[1] Upon learning of the need for a permit, the Village had retained an engineer to assist in the preparation of the necessary plans and applications, but he had informed the Village that it would cost several thousand dollars to supply the preliminary, supporting materials (R. 188-190, 204-206). The Village maintained that it could not afford such an expense, especially since negotiations for a county-wide or regional disposal program had been in the works for several years, and its adoption would mean the abandonment of this site (R. 189-192, 256-260). The Village has a population of less than 1,000 persons, is presently embarked on a major program to upgrade its lagoon system at a cost in excess of $75,000, and to improve its treatment plant at a cost in excess of $20,000 (R. 227-228). For these reasons, the Village decided not to pursue the permit (R. 256). With a thorough appreciation of the financial difficulties facing small

1. For statutory and regulation provisions requiring permits see the discussion in EPA v. CITY OF WOODSTOCK, #72-159, 5 PCB ___ (Nov. 14, 1972).

communities throughout Illinois, we nevertheless find that the Village has not obtained a permit to operate the site; that the permit system is a vital part of the State's pollution control program which cannot be ignored; and that landfill operators who take upon themselves the duties of such operations, must also assume the accompanying legal responsibilities.

Evidence further indicated that a good deal of wood products, metal, and tin materials had accumulated on the north and west sides of the fill (R. 18-19, 30, 39-40, 56, 72, 79-80, 86) but that it could easily have been there for many years (R. 112). Agency witnesses testified that the Village did not employ adequate equipment at the site, specifically noting that a large tractor is necessary to properly cover the discarded materials (R. 112, 139-142). The Village, again pointing to its financial condition, said that even a used Caterpillar tractor would cost some $35,000 (R. 187), and that, in any event, the backhoe it was renting and using at the site was adequate (R. 228-229, 245). Testimony indicated that the backhoe is not left at the site every day for fear of vandalism, but is brought there on the days it will be used and used elsewhere on other city projects at other times (R. 244). And the Village stated that as soon as it had received the Agency's complaint, it closed the site (R. 181) and, according to the Village President, covered it as well (R. 183-184). The Village also said it now transports its garbage and wastes to a site in Olney, twenty miles away (R. 184), effectively doubling the costs of disposal for its residents (R. 242).

A major aspect of the complaint against the Village involves the deposit of numerous 50-gallon barrels or drums on the site, brought from a nearby industry, Champion Laboratories. An Agency witness testified that an oily substance, looking something like paint or sludge, appeared to be seeping from the barrels, running onto the ground, into a drainage ditch at the foot of the fill (R. 74-76). The Agency maintained that the substance seeping from the barrels was a hazardous material (R. 76) but ran no tests on the substance to determine its actual chemical makeup. The Agency also contended that the substance constituted a water pollution hazard although its witness admitted that he had never seen any water whatsoever in the "ditch" at the foot of the fill (R. 122), even after a rainfall (R. 129). Several other witnesses raised the possibility that the "ditch" might merely be a depression in the landscape, and not a waterway at all; and a Sanitary Engineer testified that it indeed was not a ditch, and that the closest stream was about 1/4 mile away and didn't even run all year around (R. 206). He added that although there was a possibility that runoff from the site could reach the stream, it was improbable that it ever

would (R. 206-207).

The Vice-President of Champion Laboratories said that the material in the barrels was the residue of Johnson's wax used in the plant, and that it was not harmful (R. 158-160); he added that no oil used at the plant was deposited at the site (R. 168). And the Village Water Superintendent, who ran the site, testified that only five or six barrels would be brought there every month and a half, that the damaged ones would be dumped in a small space and the good ones returned to the plant for re-use, and that it was his belief that the contents of the barrels consisted of the residue of a paraffin or wax based substance (R. 234-236).

Garbage, refuse, oil barrels, paper and metal materials, and household wastes were observed at the site in an unconfined area, unspread, uncompacted and uncovered on December 16 and 17, 1971. The condition thus created constitutes a clear violation of the Act and Rules on these occasions, but we find that the evidence respecting the allegation of open dumping of garbage on the other dates enumerated in the complaint to be insufficient.

While the overwhelming weight of the evidence indicates that a good deal of refuse, metal and wooden materials, existed on the site for many years, we find the proof insufficient to hold the Village responsible for open dumping violations, but we do believe the fact that the materials were there for so long indicates that it was not adequately spread, compacted or covered as provided by law. We find the evidence insufficient to hold the Village responsible for depositing a "hazardous" material at the site, but do find that they deposited a "liquid" material at the site without first having obtained written approval from the State, in violation of the Rules. But we also find the Agency has failed to prove the creation of a water pollution hazard since it is questionable that any water ever flowed in the "ditch" at the foot of the fill, and doubtful that any runoff from the site ever reached nearby waterways. In order to show that a water pollution hazard has been created, there must be more proof than merely the fact that a small amount of sludge-like material might have seeped from empty barrels onto the ground, and might have found its way into a shallow depression in the ground in which no water was ever seen. Before a water pollution hazard can be shown, there must at least be some evidence of the existence of some water into which the allegedly contaminating material can flow. Here, this burden of proof was not met.

Furthermore, testimony indicated that the subsoil in the area of the fill was clay, having an extremely low porosity (R. 218). Therefore it would appear unlikely that leachate

from the pits could have reached an intermittent stream a good distance away. But in any event, the Agency offered no proof that contaminants from the site had in fact reached the stream or were likely to, and therefore we are unable to find that a water pollution hazard has been created.

Finally, the Agency testified that it observed flames and open burning at the site on February 26, 1971, generating a "huge black smoke" from what appeared to be rubber or tar paper in the fire (R. 59). No evidence at all was offered regarding the cause of the fire, which was almost out by the time the Agency's witness arrived, and it might just as easily have been accidentally as deliberately started. We therefore find no violation on this date.

In summary, there were numerous allegations of violation on several separate occasions, only a few of which were proved. It appears the Village has acted admirably in correcting its problems, and has even abandoned the site in response to the Agency's complaint, and begun to haul its refuse to a site much farther away, and at a considerably greater expense. We will impose a small penalty for the violations found herein, order the Village to put a final cover on the site (if, in fact, this has not already been done), and not to reopen the site without first having obtained the proper permits from the Agency.

This opinion constitutes the findings of fact and conclusions of law of the Board.

IT IS THE ORDER of the Pollution Control Board that:

1. Penalty in the amount of $200 is assessed against the Respondent for the violations found herein. Payment shall be made within 35 days of receipt of this Order by certified check payable to the State of Illinois, and sent to: Fiscal Services Division, Illinois Environmental Protection Agency, 2200 Churchill Road, Springfield, Illinois 62706.

2. Respondent shall apply final cover to the entire landfill site within 35 days of receipt of this order, and shall cease and desist using said site as a landfill or refuse disposal facility until such time as it has secured appropriate permits for such operations from the Illinois Environmental Protection Agency.

I, Christan Moffett, Clerk of the Pollution Control Board, certify that the Board adopted the above Opinion & Order this 14th day of November, 1972, by a vote of 4-0.

Christan L. Moffett