

ILLINOIS POLLUTION CONTROL BOARD
December 3, 1981

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,)
)
 Complainant,)
)
 v.) PCB 79-256
)
 ESL, INC., AND)
 WASTE MANAGEMENT OF ILLINOIS, INC.,)
)
 Respondents.)

OPINION AND ORDER OF THE BOARD (by J. Anderson):

As the procedural history of this action was set forth in the Board's Order of October 22, 1981, it will not be repeated here. The first four paragraphs of that Order are hereby incorporated into this Opinion as if fully set forth.

On November 23, 1981 the parties filed a joint motion for reconsideration of the October 22 Order, which Order again rejected a Stipulation and Proposal for Settlement (first submitted August 18, 1981 but supplemented May 18, 1981) and further ordered that this action go to hearing. The stipulation was rejected because it "does not contain a full stipulation of all material facts pertaining to the nature, extent and causes of the alleged facts...[but instead mainly] only representations of what each party would anticipate proving at hearing...[which are] neither admitted facts nor proven facts."

The motion for reconsideration is granted. All but the first 4 paragraphs of the October 22 Order are vacated.

The November filing is, in essence, a supplement to the original stipulation, as the "parties agree that this motion and the submissions herein should be made part of the record upon which the Board decision is based" (p. 6). It is the parties position that "no useful purpose can be served by further hearings, and that staff time of all concerned is better spent" elsewhere. In support of this position the parties submit that

"the Stipulation represents a form of 'no contest' by the respondents in anticipation of avoiding needless litigation. The parties respectfully submit that the uncontested and unrefuted representations of the Agency have the same effect as uncontested and unrefuted testimony which would be elicited from witnesses at a hearing and may be used as such by the Board to make findings limited to this proceeding. The respondents

respectfully submit that these representations may be used similarly as admissions for the limited purposes of this proceeding" (p. 3).

The motion then goes on to more fully advise the Board of the premises on which this proposed Stipulation is based.

The complaint was filed November 30, 1979. All six counts allege violations continuing through the complaint's filing date.

Count I of the Complaint alleges that beginning November 1, 1975 respondents constructed and operated storage lagoons without necessary permits, in violation of Rules 201, 202, and 210 and Sections 21 (b, e) of the Act. Count II alleges that beginning January 1, 1978 respondents violated a supplemental permit by disposing of liquid wastes by landfarming, in violation of Rules 210 and 302 and Section 21(a) of the Act. The Agency states that, as to Count I, while use of the lagoons was not specifically requested in the various permit applications, that lagoons did appear on engineering drawings, and that lagoon use was treated as a permitted activity by Agency inspectors (Motion 3). Respondents state that as to Count II, permit applications to landfill instead of landfarm were the result of a coding error on the applications.

Count III charges that beginning June 1, 1979 anaerobic decomposition of wastes in storage lagoons caused discharge of odors, unreasonably interfering with citizens' enjoyment of life and property, in violation of Section 9(a) of the Act. The Agency would present testimony of at least 25 residents who would testify to illness and inability to fully use their property, and of Agency personnel who would testify that ESL was the odor source (Stip. 5-6).

Count IV charges beginning January 1, 1978 that the landfarming methods of respondent's created a water pollution hazard in violation of Section 12(d) of the Act. The Agency would show that no permit application was made, but that no further environmental threat is posed assuming new permit conditions are met (Stip. 6, Motion 5).

Count V alleges that beginning October 17, 1979 sludges were dried on the landfill's surface without a permit, in violation of Rules 201, 202, and 210 and Sections 21 (b, e) of the Act. Count VI alleges violation of cover requirements from March 10, 1976, and daily litter collection requirements from June 9, 1977 in violation of Rules 301, 305, and 306 and Section 21(a) of the Act. There is no contest or comment concerning this allegation.

The parties proposed settlement provides that respondents shall not operate their site until operating permits are received, and provides for payment of a \$7,000 penalty.

Based on the stipulation, hearing record, and November motion, the Board is persuaded that, on balance, the better course is to accept this proposed stipulation and settlement, rather than

to send the matter to hearing. In so doing, the Board in no way expresses approval of the stipulation procedure as used in this action. While the Board has finally been more fully advised of the facts and circumstances of this action as required by Procedural Rule 334 and Section 33(c) of the Act, this twice supplemented "no contest" stipulation is accepted only in the interests of administrative economy. The Agency is advised that the Board disfavors this "no contest" approach, and that future stipulations will be strictly scrutinized for completeness and full compliance with Procedural Rule 334.

The Board finds respondents have violated Chapter 9 and the Act as alleged in the Complaint. The Stipulation and Proposal for Settlement is accepted.

This Opinion constitutes the finding of facts and conclusions of law of the Board in this matter.

ORDER

1. Respondents, ESL, Inc. and Waste Management of Illinois, Inc., have violated Rules 201, 202, 210, 301, 305, and 306 of Chapter 9: Solid Waste, and Sections 9(c) and 21(a, b, d, and e) of the Environmental Protection Act.

2. Within 45 days of the date of this Order, Respondents shall, by certified check or money order pay to the State of Illinois, a stipulated penalty of \$7,000 which is to be sent to:

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY
Fiscal Services Division
2200 Churchill Road
Springfield, IL 62706


3. The Stipulation and Proposal for Settlement of August 30, 1980 as supplemented May 18, 1980 and November 23, 1981 (Joint Motion for Reconsideration) is incorporated herein as if fully set forth.

4. The November 23, 1981 motion for reconsideration having been granted, all but the first 4 paragraphs of the Board's Order of October 22, 1981 are vacated.

IT IS SO ORDERED.

Board Members J. Dumelle and N. Werner concurred.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 3RD day of November, 1981 by a vote of 5-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board