

ILLINOIS POLLUTION CONTROL BOARD  
April 10, 1975

ENVIRONMENTAL PROTECTION AGENCY, )  
 )  
 Complainant, )  
 )  
 v. ) PCB 74-178  
 )  
 CITYWIDE SERVICES, INC., an )  
 Illinois Corporation, and the )  
 COUNTY OF KNOX, a Political )  
 Subdivision of the State of )  
 Illinois, )  
 )  
 Respondents; )  
 )  
 )  
 )  
 CITYWIDE SERVICES, INC., )  
 )  
 Petitioner, )  
 )  
 v. ) PCB 74-177  
 )  
 )  
 ENVIRONMENTAL PROTECTION AGENCY, )  
 )  
 Respondent. )

OPINION AND ORDER OF THE BOARD (by Mr. Zeitlin)

These two cases concern the operation of a landfill site by Citywide Services, Inc., on property leased by Knox County, Ill., from the City of Galesburg, who in turn had leased the property from the Burlington Northern Railway Company. Neither Galesburg nor Burlington Northern are parties to either action.

Case PCB 74-177, a Variance Petition, was originally filed by Petitioner Citywide Services, Inc.(Citywide) on May 13, 1974. On that same date the Environmental Protection Agency (Agency) filed an enforcement action, PCB 74-178, against Citywide and the County of Knox, Illinois, (Knox County). On May 16, 1974, this Board rejected Citywide's Variance Petition as inadequate, finding that it did not contain sufficient information to achieve compliance with the Board's Procedural Rules for such a petition. An Amended Petition for Variance was refiled on July 9, 1974.

The original Petition for Variance by Citywide merely asked that Citywide be permitted to operate the landfill site for 90 days after July 27, 1974, or until filled and contoured as required by the owner, Burlington Northern.

The Amended Petition for Variance incorporated by reference the Agency's enforcement complaint, and in effect claimed hardship and requested variances from the violations alleged in that complaint. (A denial of variance is not tantamount to a shutdown order, and merely exposes a petitioner to enforcement proceedings, to this extent Petitioner Citywide's claim of hardship in its amended variance petition is patently deficient.)

Pursuant to motion by Citywide, the two cases were consolidated by Board Order dated July 18, 1974.

#### HISTORY

Roughly triangular, the landfill site is located in Knox County, Illinois approximately two miles south of Galesburg. The two longer legs of its boundaries are roughly delineated by a public road and the Burlington Northern railroad tracks. The site includes a small, unnamed creek tributary to Lake Bracken, more than 1½ miles distant. There is some indication (Stip. Ex. G., p. 3) of another small stream on the site, entering the creek from the west.

The landfill site was originally leased to the City of Galesburg by the owner, then named Chicago, Burlington & Quincy Railroad Company, under an agreement dated February 1, 1964, providing for successive renewal through 1984. That lease was assigned by Galesburg to Respondent Knox County by an instrument dated June 8, 1964. Both lease and assignment thereof contemplated the leasehold's use for sanitary landfill purposes (Stip. Ex. A).

A contract between Respondents Knox County and Citywide (Stip. Ex. B and C), was executed July 27, 1964. That contract provided for the operation of the landfill site, by Citywide, for the disposal of garbage and refuse from Galesburg and several smaller municipalities. That contract set cover and final grade specifications not in conformance with later regulatory requirements, which specifications the stipulation shows were not adhered to at any rate (Stip. Ex. B, "Specifications").

Respondent Citywide registered in 1966 with the Illinois Department of Public Health, Division of Sanitary Engineering, as required by the old Rules and Regulations for Refuse Disposal Sites and Facilities.

The Agency commenced inspections of the landfill site in 1971. The Stipulation of the parties specifies 28 inspection dates since 1971. The stipulated exhibits include photographs, water sample analysis, and inspection reports which indicate continued violations since that time (Stip. Group Ex. D, E, F). There is also ample indication of repeated warnings from the Agency to Respondents following the inspections.

In June, 1974, Respondents retained a consulting engineer to inspect and prepare a closing plan for the site. That plan, (Stip. Ex. G), details closely the conditions of the landfill site, and when compared with other exhibits (Stip. Ex. D, E, F), demonstrates the extent of Respondent's violation and the environmental damage resulting. Further, that report shows the continuing potential for environmental damage which may result in the future from Respondent's mismanagement of the site.

During this period, Respondent Knox County made provision for the opening of a new sanitary landfill site, in Sparta Township. Knox County opposed Citywide's amended Petition for Variance to the extent that it would permit operation of the site here at issue in conflict with operation of the proposed Sparta Township site. The Sparta site does have an Agency permit and was scheduled for operation commencing October 1, 1974.

A hearing was held on the consolidated case at Galesburg, Illinois, on November 20, 1974, after publication. Petitioner Citywide at that time moved to withdraw its variance petition, which motion was taken under advisement by the Hearing Officer, and all parties at that time submitted a Stipulation of Fact and Proposed Settlement pursuant to Procedural Rule 333 of this Board. The contents of that stipulation are discussed below.

On January 16, 1975, Respondent Citywide filed with the Board a Motion to Postpone ruling on Stipulation and Proposal for Settlement, asking also for leave to submit a Supplemental Stipulation within 30 days. At that time Respondent Citywide also waived the 90-day rule with regard to its variance petition until April 16, 1975.

In an Order dated January 23, 1975, the Board accepted Citywide's Motion to Postpone to the extent that it rejected the original stipulation of the parties as insufficient. The Board ordered that an Amended Stipulation be resubmitted in a final, clear and cohesive fashion, setting out timetables and specific duties for the parties. The Board further ordered that, were an Amended Stipulation not filed with the Board within 30 days of the adoption of the January 23, 1975 Order, the Hearing Officer proceed to hearing in the matter.

An Amended Stipulation and Proposal for Settlement was not received by the Board until March 12, 1975. In the interim, a further hearing was held on March 7, 1975 to present the Board with sufficient information to resolve matters that the parties could not reach agreement on.

Public comment received was limited to several individual objections to a grant of Citywide's variance petition.

#### VIOLATIONS ALLEGED

Count One: The Agency's Complaint, PCB 74-178 alleges in Count One a violation of Section 21(a) of the Act, which prohibits open dumping of garbage, and Section 21(b), prohibiting the dumping of any other refuse in violation of Board rules.

Count I further alleges that leachates from the landfill site caused violations of Title 3 of the Act, and Chapter 3, Water Pollution Regulations, of this Board, for effluents and waters of the state. The alleged specific violations included levels of contaminants exceeding the following rules:

<u>RULE</u>	<u>CONTAMINANT</u>
Chapter 3, 203(f)	ammonia nitrogen (as N)
203(f)	boron
203(f)	iron
404(a)	BOD5
405	fecal coliform
408(a)	iron

Count Two: Violations of the old Rules and Regulations for Refuse Disposal Sites and Facilities, specifically:

<u>RULE</u>	<u>COVERAGE</u>
3.04	open dumping
5.03	confinement of dumping
5.04	portable fencing
5.06	spreading and compacting
5.07(a)	daily cover (6 in.)
5.07(b)	cover (two feet)
5.08	dumping liquids, hazardous material

Those rules continued in effect until July 27, 1973. The Agency alleged specific dates of violation commencing in 1971 and running through July 1973 for each of these violations, and submitted exhibits supporting the charges.

Count Three: Continued violations after the Board's adoption of Chapter 7, Solid Waste Rules and Regulations. Those alleged violations specifically included:

<u>RULE</u>	<u>COVERAGE</u>
Chapter 7, 305(a)	daily cover (6 in.) after 7 60 day cover (12 in.)
305(c)	final cover (2 ft.)
310(b)	liquid and hazardous waste, permit requirement
303(b)	spreading and compacting
314(e)	leachate monitor and control
314(f)	vector control
306	daily litter collection

All violations as referred to by the Agency were alleged to be of a continuing nature.

STIPULATION

The Stipulation and Proposed Settlement (Stipulation) originally submitted by the parties to this action was less than exemplary. It was difficult in places to determine the final agreements of the parties; it was in some places referenced information neither in the record nor stipulated to, and appeared to be contradictory in places. The Amended Stipulation and Settlement plan (Amended Stipulation) filed on March 12, 1975 resolves these difficulties, and permits the Board to reach a proper final determination in this matter. The Amended Stipulation, although referenced to the original unaccepted Stipulation, sufficiently clarified the confusion and contradiction which rendered that attempted settlement unacceptable.

To completely list the provisions of the Amended Stipulation would require excessive time and not serve any purpose. In sum, it provides for the closure of the site in question, future sampling and maintenance at that site to insure continued compliance with the Board's effluent, water and landfill regulations, and contains a provision allowing the Board to assess penalties against Respondent Knox County and Citywide. A performance bond is also required to insure compliance. Briefly, the Amended Stipulation includes the following:

- A. Closure of Site: The present landfill site is to cease all operations except those necessary for closing by March 15, 1975. The operator is to provide a minimum of two feet final cover, and suitable revegetation. Exhibit G to the Amended Stipulation shows the proper contour and grades which Citywide will achieve on the site, using fill as specified.

All contouring, grading and seeding of the site shall be completed by Citywide in accordance with the compliance plan (Exhibit G), as soon after March 15, 1975, as weather permits, but no later than August 15, 1975. Respondent Citywide must identify the source of cover material to be used for completion and closure of the site within 15 days of the adoption of this Order by the Board.

- B. Sampling, Treatment and Maintenance: At several points on the site (Exhibit G), water samples are to be taken and analyzed for ammonia (NH<sub>3</sub>), boron, iron, manganese, chloride, total dissolved solids (TDS), and chemical oxygen demand. Such samples are to be taken quarterly until April 15, 1980, that period renewable if necessary to meet the prescribed standards.

The water from a house well near the site is to be tested quarterly until the TDS, chlorides, and iron standards of this Board for groundwater are met for two consecutive quarters. After that time testing will not be required. Further, an old well on the site is to be reopened for test purposes.

If shown to be necessary as a result of the water quality samples taken at the site, a treatment pond for leachate shall be constructed on the site. Respondent Knox County will dispose of treatment pond pumpings by transportation to a local sanitary district. Knox County must reach an agreement with a sanitary district willing to take the effluent which will allow for such disposal, within 30 days after the Order in this case has been adopted by the Board.

Even if the construction of this pond is not made necessary by poor test sample quality, Respondents will be required to insure that leachate seeps or springs do not enter or pollute the watercourse on the site. Additional steps include the construction of a clay dike, mulching the stream banks to prevent erosion, and diversion of runoff.

- C. Penalties: Despite Respondents' long history of non-compliance and violation, the Agency has stipulated and consented to penalties of \$2,000 and \$500 for Citywide and Knox County, respectively.
  
- D. Bond: Respondents have provided a performance bond, in the amount of \$143,400, to insure that the plans for closing the site, and subsequent maintenance, sampling, and treatment are followed.

While the penalties would ordinarily be insufficient, the Amended Stipulation and its exhibits show that the compliance and closure plans to be implemented will entail considerable expense to both Respondents, and that both have cooperated fully with the Agency as regards these plans. The immediate additional equipment, labor, and engineering fees for Respondents will amount to either \$43,400 or \$46,321, (dependant on length of time of closing plan). Respondent Knox County will be required to absorb sampling costs over 5 years, and there is also a substantive probability that the parties will be required to construct a treatment pond.

The provisions of the bond, which assure Respondents' complete performance of the Amended Stipulation requirements, is a major factor allowing this Board to accept the proposal of the parties. This is particularly true in light of the relatively small penalties imposed here. The Amended Stipulation and the performance bond, make the parties jointly and severally liable for the construction of the treatment pond discussed above, should such construction be necessary. The bond coverage for that contingency is \$100,000.

The other provisions of the Amended Stipulation are too numerous to set out here. The above constitutes only a partial summary which is expressly made a part of this Opinion and Order.

DRAINAGE DITCH DIVERSION

A drainage ditch presently enters this site from the east. The issue of whether or not this drainage ditch must be immediately diverted and prevented from flowing across the site is the only issue which the parties cannot resolve themselves. Knox County and Citywide feel that diversion of the ditch would be unnecessary, and result in little or no benefit to the environment. The Agency feels that immediate diversion of the drainage ditch should be made a part of the Board's Order in this matter. The parties have left the resolution of this question to the Board, and the hearing held on March 7, 1975 had as its sole subject the necessity, feasibility, and cost for such a diversion.

The ditch in question is fed initially by drainage from property not on the site in question. On the site, the ditch is fed by a culvert carrying flow under a road separating the site from adjacent property. The ditch then flows past monitoring point Y and into the creek flowing through the site, described above. On the site, the ditch is bounded on both sides by filled areas. Agency testimony indicated that the ditch collects waters from approximately 30 acres of property adjacent to the site, and also from one-half of the site itself, or an additional 30 acres (R 34, 35).

The Agency is of the opinion that the ditch should be diverted for two reasons:

1. Flow from points off the site will, in effect, treat leachate from the site itself by dilution. This would result in false reading of pollutant content in monitoring samples taken at point Y on the site. Such false readings, in turn, would result in frustration of the contingency plan to construct a treatment pond if samples show the necessity for such a pond as a result of unacceptable sample readings (R. 44).
2. Continued flow, particularly during rainy periods, would result in erosion of the banks of the ditch, exacerbating the leachate problem (R. 46).

The Agency's only witness presented calculations indicating that these results are likely given a two-year storm in the area, resulting in a flow through the culvert, onto the site, of two cubic feet per second (R. 41).

Respondents, on the other hand, feel that the ditch presents no immediate danger to the environment, and that diversion of the ditch should be made a contingency, dependant on sampling results in the same manner as in the treatment pond contained in the Amended Stipulation. Respondents

presented testimony attaching the calculations of the Agency as to the drainage area off the site contributing to the ditch flow, and as to the representative quality of the Agency witness's observations (eg. R. 98, 99, 106).

Respondents' major contention, however, is that the diversion of the ditch will not result in benefits consistent with the cost of diversion. But the testimony presented by Respondents was not definitive as to the cost of diversion. While there was testimony that one possible method of diversion would cost \$7,000 (R. 104), there was also evidence that other methods might be possible, for which costs have not been determined, but which would be less expensive (R. 126, 127).

The Agency's case in this matter is clearly more persuasive. The Agency elicited testimony, on both direct and cross-examination, demonstrating that failure to divert the ditch would present a real danger of environmental harm. The possibility of such harm outweighs the potential cost of diversion of the ditch, and should be accomplished by Respondents as a part of the compliance plan to clean up the damage already done in the operation of this site.

The parties have not submitted to the Board any definite plan for the diversion of the ditch here. We need not contemplate on how it is to be accomplished. The diversion shall instead be accomplished by Respondents in whatever manner is consistent with our decision here, and is acceptable to the Agency. It is evident from the testimony that the waters carried by this ditch must at some point flow into the stream, discussed above, which crosses the landfill site. It is only of importance here that such confluence not interfere with drainage on the site; the Respondents are left to their own devices in achieving that end.

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

ORDER

IT IS THE ORDER of the Pollution Control Board that:

1. Respondents Citywide Services, Inc., and the County of Knox, Ill. are found to have caused or allowed violations of the applicable Rules and Regulations for Refuse Disposal Sites, (Rules), continued in effect until July 23, 1973, and the applicable Chapter 3 and Chapter 7 Rules and Regulations of this Board, on dates as shown in the Stipulation of Fact of the parties. Such violations were of:

Rule 3.04	open dumping
Rule 5.07(a)	daily cover
Rule 5.04	fencing
Rule 5.03	confined area
Rule 5.06	spreading & compacting
Rule 5.07(b)	2 foot cover



Rule 5.08	liquids, hazardous material
Ch. 7, Rule 305(a)	daily cover
Ch. 7, Rule 305(b)	intermediate cover
Ch. 7, Rule 305(c)	final cover
Ch. 7, Rule 314(e)	leachate control
Ch. 7, Rule 314(f)	vector control
Ch. 7, Rule 310(b)	liquids, hazardous material
Ch. 3, Rule 203(f)	ammonia nitrogen, iron, boron
Ch. 3, Rule 404(a)	BOD <sub>5</sub>
Ch. 3, Rule 405	fecal coliform
Ch. 3, Rule 408(a)	iron

2. Respondents Citywide Services, Inc., and County of Knox, Ill., are further found to have caused or allowed violations of Sections 21(a) and 21(b) of the Illinois Environmental Protection Act, on the dates shown in the parties' Stipulation of Fact, (Exhibit H).

3. Both Respondents will conform in all ways to the plans of closing and compliance, and to the dates of performance thereunder, contained in the Stipulation and Proposal for Settlement submitted to this Board, as amended, and in the exhibits thereto.

4. Respondent Citywide Services, Inc., shall pay a penalty of \$2,000 for violations as detailed above, and in the Stipulation of the parties. Payment is to be made within 35 days of the date of this Order by certified check or money order to:

State of Illinois  
Fiscal Services Division  
Illinois Environmental Protection Agency  
2200 Churchill Road  
Springfield, Illinois 62706

5. Respondent County of Knox, Illinois shall pay a penalty of \$500 for violations as detailed above, and in the Stipulation of the parties. Payment is to be made within 35 days of the date of this Order by certified check or money order to:

State of Illinois  
Fiscal Services Division  
Illinois Environmental Protection Agency  
2200 Churchill Road  
Springfield, Illinois 62706

6. Respondents Citywide Services, Inc., and County of Knox, Ill., shall jointly within 30 days of the adoption of this Order by the Board submit, in a form acceptable to the Agency, a performance bond in the amount of \$143,400. Such bond will be submitted to the Agency and will assure compliance with the plans for closing, sampling, treatment and maintenance as detailed in the Amended Stipulation.

7. The drainage ditch discussed in Paragraph G of the Amended Stipulation submitted by the parties hereto shall be diverted in a manner consistent with this Opinion, the responsibility for such diversion being joint and several upon Respondents Citywide Services, Inc., and County of Knox, diversion to be accomplished on or before August 15, 1975, or upon the completion of all closing requirements contemplated in paragraph C of the Amended Stipulation, whichever is sooner.

8. The Variance Petition of Citywide Services, Inc., PCB 74-177 is dismissed.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board hereby certify that the above Opinion and Order were adopted on the 10<sup>th</sup> day of April, 1975 by a vote of 4 to 0.

  
Christan L. Moffett, Clerk  
Illinois Pollution Control Board