

ILLINOIS POLLUTION CONTROL BOARD  
February 17, 1972

MERLE K. BUERKETT )  
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 v. ) # 71-303  
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 ENVIRONMENTAL PROTECTION AGENCY )

Mr. Alfred B. LaBarre, Attorney, for Merle K. Buerkett  
Messrs. Larry R. Eaton and Wayne Golomb, Assistant Attorneys General,  
for the Environmental Protection Agency

Opinion and Order of the Board (by Mr. Currie):

Petitioner Buerkett operates a landfill at Springfield. He seeks a variance from the Rules and Regulations for Refuse Disposal Sites and Facilities to allow the dumping of acid sludge from the recycling of used motor oil in an open pit, without complying with the covering requirements of the Rules and without permission of the Environmental Protection Agency, whose consent is required both by the Rules (Rule 5.08) and by an earlier order of this Board in an enforcement case involving this same landfill (EPA v. Clay Products, Inc., #71-41, June 23, 1971) for the dumping of liquid or hazardous materials. The waste sludge is generated by Sorco Oil Refining Co., which sought to intervene as a party petitioner.

The Agency argued that Mr. Buerkett had no standing to seek this variance because the alleged hardship was Sorco's and not his (see Recommendation). This argument is mooted by Sorco's intervention, and is refuted by our decision in North Shore Sanitary District v. EPA, # 71-343 (Jan. 24, 1971). Hardships to persons other than the petitioner, such as to employees or customers, are commonly the basis for granting variances. The Agency further contended that the Board lacked jurisdiction over this petition because of the prior order, which stated that the Agency was to decide whether or not such material could be accepted at the site (R. 8). But the permit procedure prescribed in the order has been exhausted (R. 9); we did not intend to give the Agency unreviewable discretion in the matter, and we could not legally have done so since the statute expressly allows for variances from orders of the Board (Section 35).

The record shows that Sorco purchases used motor oil from independent contractors who collect it from service stations by truck (R. 71, 122, 136-38). The used oil is a waste product to the service station operator (R. 13), which he is anxious to get off his hands both to avoid problems with the fire marshal (R. 32),

and to avoid cluttering up the premises with useless material. Generally no fee is charged the station operator for providing the pickup service (R. 139). Sorco pays 5¢ per gallon to the contractor who collects the oil (R. 120), and then Sorco reprocesses it into a saleable and entirely satisfactory product (R. 104) that is sold in competition with virgin motor oil (R. 77-78). Sorco sells for 21 1/2¢ per gallon; virgin oil sells in the same market for 23 3/4¢ or more including tax (R. 83-84, 106, 111). There are only two oil reprocessors in all Illinois (R. 12, 75), and Sorco's contractors collect oil from over much of the State and even beyond (R. 138).

Reprocessing entails the use of an acid, which ends up as part of an unusable waste sludge that must be disposed of (R. 79). The volume of this sludge is much less than of the initial oil collected from service stations; only 8% of that collected cannot be reused in one or another form (R. 77). The total amount of sludge to be disposed of in a normal day is about 600 gallons (R. 74).

In the past Sorco deposited the sludge in an open pit at the Buerkett landfill site (R. 49, 79). The sludge is quite difficult to handle; it will eat holes in workers' clothes (R. 60, 129, 153) and causes extensive damage to earth-moving equipment if efforts are made to bury and cover it, (R. 57, 153). Other materials had a way of getting into the old pit (R. 151), and ultimately filling that pit with trees and dirt caused problems including equipment damage (R. 57, 152). Because of incomplete compaction, there is a question as to the solidity of the filled pit (R. 152). After covering at another site, the sludge permeated the surface and "sterilized several areas" (R. 158). The Agency refused permission for open dumping to continue, and dumping has stopped pursuant to our earlier order (R. 50).

The Agency has expended considerable effort in attempting to help Sorco find a more satisfactory solution to its disposal problem (R. 155). At the Agency's suggestion, Mr. Buerkett mixed an amount of the sludge with powdered limestone, which adequately neutralized the acid and created a material that could be handled with ordinary equipment and buried in a traditional landfill (R. 53-55, 59-60, 68, 156,-57). The cost of this procedure, Mr. Buerkett testified, would be from \$100 to \$125 per load of 600 gallons (R. 53-59, 63). At one load per day five times a week (ibid), this amounts to a total disposal cost, in compliance with the rules, of \$2000 to \$2500 per month (R. 116), as compared with \$500 per month for open pit disposal (R. 65). Thus the incremental cost of doing it right would be no more than \$24,000 per year (R. 85) for the wastes from recycling the oil from all of Illinois outside the Chicago area. No objections were raised to this procedure except money (R. 63).

Sorco contends that this cost might put it out of business. Its normal profit, it testified, is about 2¢ per gallon (R. 84-85, R. 121-22). It fears that if it raises its price the anticipated 1¢ per gallon to cover the increased cost<sup>1</sup> it might lose some of its customers (R. 118), although its price would still be below that of its competitors (R. 110). It bases this prediction --an admitted guess (R. 132)--on evidence that the last time it raised its price 1¢ it lost a number of customers (R. 87) accounting for 20% of its market (R. 106). The argument is that we should not do anything to risk the loss of Sorco because it performs a useful service in recycling what would otherwise be a much larger waste disposal problem.

It is always unfortunate if pollution expenditures force anyone providing useful services out of business, and we recognize the value of recycling. But it is not the law that those who recycle are exempt from the pollution laws; the statute makes clear that avoiding undue pollution is a cost of everyone's doing business (Section 2(b)). On this record we are not convinced that the cost of proper sludge disposal would be too much for Sorco. The evidence that a price rise in the past resulted in a market reduction does not prove that a rise under different circumstances<sup>2</sup> would have the same result. Under-selling a competitor by 10% is a fairly attractive position. And we think insufficient consideration has been given to the possibility of passing the increased cost back to the service station owner rather than forward to the consumer. The station owner has a waste problem; the collector renders him a useful service for which he should be willing to pay a small fee.<sup>3</sup> The cost of waste disposal is a fair cost of his doing business too. There is nothing unusual about charging people for disposing of their wastes. The possibility that a charge might induce a station owner to dump his oil down the sewer (R. 20) we do not think is sufficient justification for avoiding the charge.

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1. Sorco first estimated 2¢ per gallon (R. 85). But cross-examination on the basis of Sorco's own volume and cost figures reduced this estimate to 1 1/2¢ (R. 113), and subtraction of the open-pit cost of about 1/2¢ admittedly reduced the incremental cost per gallon to 1¢ (R. 117-18).
  2. Among other things, the testimony is that the lost customers were geographically situated so as to reduce Sorco's normal transportation cost advantage (R. 107).
  3. It was estimated that a station operator would take 5-6 months to fill a 500-gallon tank (R. 142). At 1¢ a gallon such an operator would pay a pickup fee of ten to twelve dollars per year.

There are substantial penalties provided for such illegal activities, and we would not expect people to risk such penalties, even if they were inclined to violate the law, to avoid paying a charge as small as that which would be necessary to cover the nominal cost in this case.

In summary, we find that the dangers, unsightliness, and possibility of permanent land damage (R. 158) of open pit disposal of the acid sludge in this case can be avoided by the expenditure of an extra \$20,000 per year, that the cost is quite small and well worth it, and that there is no reason it should be an unreasonable burden on Sorco.

We do not by this decision rule out lagooning of other liquid wastes where appropriate, any more than the Agency by refusing this permit indicated it would never issue any. In each case the decision turns on the facts. What we hold today is that open dumping of the waste in this case can be avoided at reasonable cost. The variance is denied.

Mr. Dumelle dissents.

I, Christian Moffett, Clerk of the Pollution Control Board, certify that the Board adopted the above Opinion and Order of the Board this 17th day of February, 1972 by a vote of 4-1.

