ILLINOIS POLLUTION CONTROL BOARD
April 27, 1989

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| KENNETH K. GETTY, | ) | |
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| Complainant, | ) | |
| | ) | |
| and | ) | |
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| EDWIN and SUE KOZOYED, ET AL., | ) | |
| | ) | |
| Intervenors, | ) | |
| | ) | |
| v. | ) | PCB 86-181 |
| | ) | |
| VILLAGE OF RIVERSIDE, | ) | |
| | ) | |
| Respondent. | ) | |

OPINION AND ORDER OF THE BOARD (by B. Forcade):

This matter is before the Board on the October 17, 1986 formal complaint of Kenneth R. Getty ("Getty") against the Village of Riverside ("Riverside"). The complaint alleged violations of the Environmental Protection Act ("Act"), Ill. Rev. Stat. ch. 111 1/2, pars. 1001-1052. A January 4, 1988 amendment to the complaint made by 25 intervenors represented by counsel ("Intervenors") added alleged violations of other sections of the Act, as well as alleged violations of various Board rules. In sum, the unnumbered allegations fall into four basic categories:

(1) Riverside caused or allowed the open dumping of wastes on 10.8 acres of land Riverside owns in the Riverside Lawn community (alleged Section 21(a) violation);

(2) Riverside abandoned, dumped, or deposited wastes on this land, which was not an approved landfill (alleged Section 21(b) violation);

(3) Riverside deposited wastes on this property in a manner that created hazard of polluting the underlying groundwater and the adjacent DesPlaines River (alleged Section 12(d) violation); and

(4) Riverside conducted an unpermitted, non-complying waste disposal operation or a sanitary landfill operation on this site.

(alleged Section 12(d), 21(p), and 35 Ill. Adm. Code 807 violations).

Six days of public hearings occurred between September 2, 1987 and September 11, 1988. Numerous members of the public attended. The hearing officer granted 46 individuals intervenors' status on September 2, 1987. R. 5-8. On January 4, 1988, he allowed the motion to amend the complaint filed by the Intervenors.

The parties have fully briefed the issues involved. Getty filed a post-hearing Closing Argument on September 22, 1988. The Intervenors filed a Post-Hearing Brief on the same day. Riverside filed its Response Brief on November 10, 1988. The Intervenors filed their Reply Brief instanter on December 13, 1988.

The parties have raised a number of issues by numerous motions filed during the briefing. The Intervenors filed a December 6, 1988 motion to strike an exhibit attached to Riverside's Response Brief, and a Board Order of December 15 granted this motion. The Intervenors' Reply Brief contained certain evidentiary motions. Riverside filed a motion to strike those evidentiary motions on December 16, 1988, and the Intervenors responded on December 23, 1988. The Board granted Riverside's motion to strike in part and denied it in part on January 19. 1989. The Board did not address the Intervenors' evidentiary motions.

DISCUSSION

This proceeding involves a 10.8 acre parcel owned by Riverside, which is bounded by the Des Plaines River on one side and is in close proximity to the unincorporated Riverside Lawn community on the other. Riverside acquired the property and annexed it in 1941. Riverside Post-Hearing Brief at 2. It is located in the floodway of the Des Plaines River. Joint Ex. 1. The site operated as a landfill until about 1967. Riverside Brief at 4; Intervenors' Ex. 36. Getty, an owner of adjacent land in the Riverside Lawn area, commenced this action, and numerous Riverside Lawn residents intervened. The complaining parties allege violations of Sections 12(d), 21(a), 21(b), 21(d), and 21(p) of the Act and various provisions of 35 Ill. Adm. Code 807. They primarily seek two alternative forms of relief (in lieu of any penalties): total removal of all deposited wastes or certain closure/post-closure care measures in conjunction with certain additional measures.

Elaborate discussion of all of the facts and allegations involved in this matter is unnecessary. So also is consideration of the evidentiary issues raised by the Intervenors. Neither Getty nor the Intervenors seek the imposition of a penalty

Rather, they request remedial actions by Riverside. See Complaint; Intervenors' Motion to Amend Complaint; Getty Closing Argument; Intervenors' Post-Hearing Brief at 37; Intervenors' Reply Brief at 21-24. This posture obviates detailed findings of violations; a single finding of violation would authorize the Board to consider the requested relief. Further, none of the contested evidence (Riverside Ex. 3; Kendzior Ex. 1, 4, 7, 8, 10, 12, 14, 16, 17 & 19; Intervenors' Ex. 6Aiii; Getty Ex. 1-8; R. 868-72 & 879-906) is essential to either the findings of violation made today or the remedial action imposed on Riverside.

Liability

Section 21 of the Act includes the following prohibitions:

> No person shall:
>
> a. Cause or allow the open dumping of any waste.
>
> b. Abandon, dump, or deposit any waste upon the public highways or other public property, except in a sanitary landfill approved by the Agency pursuant to regulations adopted by the Board.
>
> Ill. Rev. Stat. ch. 111 1/2, par. 1021 (1989)

Riverside violated both subsections (a) and (b) of Section 21 of the Act.

With regard to the first category of alleged violations, Riverside's alleged causing or allowing open dumping on its property (in violation of Section 21(a) of the Act), Riverside admits that it allowed open dumping on the subject property. Riverside's Response Brief includes the following admissions:

> From testimony and evidence submitted during this proceeding it appears that dumping activities within the area, including the Respondent's site, took place following the adoption of the Environmental Protection Act following the closing by Respondent of its site to further landfill uses.
>
> Response at 5.
>
> Respondent's site as well as adjacent Forest Preserve District and private property were subjects of unauthorized random dumping of garbage, abandoned vehicles, concrete materials and household items.

Id. at 11.

> [T]he Respondent admits ... that the subject property had been the situs for much random and fly dumping by unauthorized persons .... Respondent ... acknowledges its responsibility for allowing its property to be used for nuisance dumping.
>
> [Riverside's site security] measures were not adequate to prevent unauthorized persons from using Respondent's site and the surrounding area [for dumping].

Id. at 16-17.

> Respondent concedes that unauthorized and random dumping has occurred on Respondent's property, and to the extent that Respondent has suffered or otherwise put up with such dumping, it has "allowed" the same to occur.

Id. at 18.

Riverside's only assertion that it was not guilty of allowing open dumping in contravention of Section 21(a) is as follows:

> Accordingly, while Respondent could be held to have "allowed" random dumping on its property as a result of not taking measures to secure the area from such activities, it must be pointed out that Respondent did not allow such debris to remain on its property as a permanent disposal, and Respondent thus did not allow its property to be a permanent disposal site.... Respondent's acts in allowing its property to become subject to open dumping by random and fly dumpers ... ended on August 25, 1986 when it received notice by the [Agency] to cease using its property for the disposal of waste, and it embarked on procedures for cleaning up, securing and closing its site from further dumping. Respondent was not guilty of allowing such open dumping to occur on the date that the subject complaint was filed in October of 1986, nor has any such open dumping occurred following receipt by Respondent of the August 22, 1986 [Agency] letter.

Id. at 21-22

Thus, Riverside's defense focuses on its cleanup efforts undertaken after August 25, 1986.

The Board finds that Riverside allowed open dumping on the subject site in violation of Section 21(a) of the Act, at least until August 25, 1986. In reaching this conclusion, the Board does not consider the effect of cleanup and enhanced site security measures undertaken by Riverside after that date.

With regard to the second category of alleged violations, Riverside's alleged abandonment, dumping, or depositing wastes on its property (in violation of Section 21(b) of the Act), Riverside's Response Brief includes several factual admissions. The following is representative:

> With respect to causing open dumping by its own actions, the Village Manager and Director of the Public Works Department of Respondent have both testified that they used the subject property on and off during the past several years (until receipt of the August 22, 1986 [Agency] letter requesting that such use be prohibited) as a site for the temporary disposal of construction materials from water main and similar repairs undertaken by Respondent's Public Works Department and for street sweepings and landscape materials from the Respondent's park system, including trees that had been blown down during storms or other emergency weather conditions. Landscape materials were mulched and subsequently returned with wood chips to the Village park system for composting. The remaining construction materials were removed, together with any random or fly dumping deposits, to an approved landfill site at such times as Respondent's six man Public Works crew was available to undertake these removal and hauling activities.
>
> * * * *
>
> None of these materials were intentionally deposited by Respondent to serve as permanent disposal, but were instead deposited on a temporary basis for ultimate transfer either to an approved landfill site or, in the instance of wood chips and mulching landscape materials, to be returned to the public park system for use in forming chip beds for the park trees to protect the trees from grass

> mowers, or for composting purposes for trees and shrubbery within the park system....
>
> When, on August 22, 1986, the [Agency] notified Respondent's Village Manager by letter that such temporary deposit practices were improper, these deposits immediately ceased. At the time this complaint was filed in October of 1986, the Village had discontinued causing such open dumping and was in the process of cleaning up the site in accordance with requirements of the [Agency]. The Respondent was therefore not causing open dumping of any waste on its property at the time that the subject complaint was filed, but was instead involved in preparations to remove past deposits therefrom....
>
> Accordingly, while the Respondent prior to August 25, 1986 did use its own property to temporarily deposit landscape and public works repair construction materials from its own park and street system, such practice, or violation, terminated on August 25, 1986, in accordance with an [Agency] notice as previously stated in this Response.
>
> Riverside Response Brief at 22-25 & 27 (record citations omitted); see Id. at 10-12 & 16; R. 982-85, 995, 1004, 1124, 1132, 1143-44, 1151-53, 1180, 1347, 1349, 1371-72 & 1381-83.

Thus, Riverside admits that it placed or caused the deposition of waste materials on the site. However, Riverside claims these activities constituted temporary waste storage, and that it did not "abandon, dump, or deposit" these wastes on the site. See Act, Section 21(b). Key facts in the record indicate otherwise.

The Intervenors' witness, Mr. Kania, a professional cartographer, compared topographic contour maps of a portion of the site. The Illinois Department of Transportation, Division of Water Resources plotted the first map from existing data on March 1974. Intervenors' Ex. 15. Riverside's consulting engineers, Consoer, Townsend & Associates, prepared the second map in November 1987. Joint Ex. 1. This comparison revealed that various areas of the site increased and decreased by varying degrees between 1974 and 1987. The net changes in elevation disclose that the site has increased by about 59,000 cubic feet since 1974. R. 367-439; Ex. 16 & 17. This evidence indicates that more deposition of wastes occurred at the site than removal.

Eyewitness testimony supports a conclusion that Riverside

deposited or caused to be deposited more wastes than it removed, at least until August 1986. This includes testimony as to changes in physical features on the site since the early 1970s. It also includes testimony of Riverside's activities at the site.

Area residents observed an increase in site elevation since the early 1970s. Mr. Getty, an area resident, testified that "there was a lot less material in 1973 than there is in 1987." R. 55; cf. R. 34-36 (testimony including a much broader time frame). Mr. Richard West, a Riverside Lawn resident, observed that debris now covers several feet of the trunk of a large tree in which his son played in about 1972. R. 319-20, 332-33 & 337-39. Robert Halac, another resident of Riverside Lawn noted that a former "berm" on which he played as a boy in about 1970 has now disappeared. R. 457-58 & 463-65. Thus, eyewitness testimony as to changes in physical features on the site corroborates the fact that waste deposition has occurred.

Several more witnesses' testimonies further corroborate this changes since the early 1970s. Mr. Getty saw Riverside vehicles deposit wood chips, street sweeper refuse, parts of trees and trimmings, street repair debris, and black top on the site. He even spoke with uniformed Riverside employees on one such occasion. He saw such vehicles come in full and leave empty, but saw none come in empty and leave full. R. 36, 138-40 & 174-75; see Getty Ex. 1E-3E & 1F-3F (photographs). Riverside Lawn residents similarly saw vehicles of waste materials entering full and leaving empty, but did not see full vehicles leaving the site. R. 72, 75-77 & 313-15 (R. West); R. 91 (F. Grittanni); R. 96, 99-100 & 103 (D. Taylor); R. 445-46 & 456-57 (R. Halac); see also R. 982-85, 995, 1004, 1132, 1143-44, 1151-53 & 1180 (C. Kendzior, Riverside Village Manager); R. 1347, 1349, 1371-72 & 1381-83 (K. Van Dyke, Riverside Sup't Public Works). Other residents simply saw the new appearance of wastes during this time. R. 204, 295-96 & 219-20 (S. Kozoyed); R. 343-44 & 347-78 (M. West). Residents also saw bulldozers operating on the site to spread wastes, but never saw any equipment on the site capable of loading wastes. R. 313, 316-17 & 328 (R. West); R. 346 (M. West): r. 449 & 458 (R. Halac).

Therefore, the record supports a conclusion that Riverside's "temporary storage" activities actually resulted in the deposit of wastes on the subject site. On this basis, the Board finds that Riverside "abandon[ed], dump[ed], or deposit[ed]" wastes on its Riverside Lawn property in violation of Section 21(b) of the Act. Any changes in the character of Riverside's activities on the site that occurred after August 1986 do not affect this conclusion as it relates to activities that occurred prior to that date.

Having found that Riverside contravened statutory provisions in the first two categories of allegations, Sections 21(a) and

21(b) of the Act, the Board will not address the other two categories of alleged violations (that Riverside deposited wastes on land in a manner that threatens water pollution and that Riverside conducted an unpermitted, non-complying waste disposal or sanitary landfill operation on its property). The Board has also not considered the status of Riverside's post-1986 activities on the site. As mentioned earlier, the only necessary predicate to the Board's consideration of an appropriate remedy (when monetary penalties are not requested) is a single finding of violation. Thus, a finding of a violation of either Section 21(a) or 21(b) is sufficient to evoke the Board's remedial powers, and such a finding would obviate additional consideration of the alleged violations of Sections 12(d), 21(d), and 21(p) of the Act and Part 807 of the Board's rules. The Board's decision today does not address the issue of whether Section 21(p) would apply to an unpermitted waste disposal activity or facility.

In making its orders and determinations, the Board must consider the criteria set forth in Section 33(c). In this instance, absent civil penalty considerations, the Section 33(c) factors are not primary considerations.

Riverside's activities on its land constituted a significant "interference with the protection of the health, general welfare and physical property of the people" residing in the Riverside Lawn community. See Act, Section 33(c)(1). Whereas the site may have some "social and economic value" to Riverside for the waste activities that it conducted there, any such value is far outweighed by the "unsuitability of [Riverside's waste activities] to the area in which it is located." Further, waste management activities are inherently of greater social and economic value when conducted at a permitted facility in compliance with law. See Sections 33(c)(2) & 33(c)(3). (The record further indicates that neighboring residences predate Riverside's waste activities, but this is immaterial where those activities are concededly conducted at a site without a valid permit.) Riverside's management of its wastes at a permitted facility in compliance with the Act and Board regulations was both "technically practicabl[e] and economic[ally] reasonable[]." See Section 33(c)(4). Finally, "economic benefits accrued" to Riverside through its non-compliance to the extent that Riverside did not incur the costs of proper waste management at an approved landfill. See Section 33(c)(5).

The Board will now consider an appropriate remedy. As part of such consideration, Riverside's post-1986 activities and the totality of the circumstances at the site become relevant.

Remedy

The Act authorizes the Board to enter a final order as the Board deems appropriate under the circumstances. See Ill. Rev. Stat. ch. 111 1/2, par. 1033(a) (1989).

> Such order may include a direction to cease and desist from violations of the Act or of the Board's rules and regulations or of any permit or term or condition thereof ....
>
> Section 1033(b).

The record indicates that varied materials accumulated on the site and that, although much cleanup work has occurred, some materials remain there. The wastes that accumulated on the site included aggregate and earthen materials from road re-construction and repairs, such as concrete curbing, concrete light posts, asphalt, concrete blocks and bricks, and earth; street sweepings; sandbags from flood control; landscaping wastes; miscellaneous metal, wood, and plastic materials; and a small number of discarded tires. Riverside had removed much of the superficial materials prior to the date ot the last public hearing, in July 1988. However, some superficial waste deposits remain on the site, R. 258-91 & 922-75; Village Ex. 5, 6, 14-16, 19-21, 23-29, 33 & 36-40, and the undisturbed internal contents of the accumulated mound are unknown as indicated by this record. These facts raise serious questions relating to the nature of the wastes left in place on the site.

The record does not indicate the potential impact of the accumulated wastes on the groundwater and environment. The record indicates that some Riverside Lawn wells are contaminated with low levels of industrial volatile solvents and their degradation products. R. 570-624 & 867-68; Intervenors Ex. 20-23. However, there is no basis for concluding whether or not this contamination is attributable to the site. On the one hand, the record does not indicate that anyone disposed of solvents on the site, and there are other possible present and former potential sources for the contamination that are in closer proximity to the contaminated wells than is the Riverside property. R. 966-69, 1330-40, 1363-64 & 1434-65; Village Ex. 41 & 42. On the other hand, the known materials on the site have an unknown impact on the groundwater, R. 550 & 555, and the site hydrogeology is uncertain. R. 479-85, 507-08 & 541-46; Intervenors Ex. 19. This breeds other serious questions concerning the impact of the remaining wastes.

In light of the fact that wastes of unknown nature and environmental impact have accumulated and remain on the site, the Board believes that a remedy is appropriate. Such site operation warrants future compliance with the Act and Board regulations.

Finally, and probably most importantly, Riverside has engaged in remedial work directed toward closing and securing the site against further waste depositions.

As of July 1988, Riverside had begun the process of removing superficial debris from its property, had fenced the elevated portions of the site, and had installed groundwater monitoring wells around the perimeter of the fenced mound. Riverside's remedial work to date is directed toward the removal of superficial debris, the installation of a final cover, securing the site, and monitoring the groundwater for contamination. The thrust of this work is directed toward the in situ disposition of the remaining wastes. Although the Agency has actively inspected this site in recent years, and Riverside has actively sought Agency cooperation in closing the site, R. 656-84, 789-856, 1002-83, 1221-82 & 1424-28; Intervenors Ex. 25-28 & 30, this closure activity makes it all the more important that the Board impose some restrictions by way of a remedial order. Such an order would assure that Riverside will close the site in a manner that is consistent with the Act and Board regulations, and which protects human health and the environment.

Each of the parties has suggested some form of relief as appropriate. Getty seeks a closure and monitoring of the site as sufficient. Getty did not request that the Board impose a penalty. The Intervenors want the Board to order the removal of the entire waste mound. In the alternative, the Intervenors desire the complete characterization of the waste mound, waste containment on the site, and site closure and post-closure care. They also request that Riverside provide Riverside Lawn residents with an alternative source of drinking water. The Intervenors also do not want the Board to impose a penalty. Intervenors' Post-Hearing Brief at 36-37. Riverside requests that the Board allow it to continue the cover and final closure of the site it has begun in cooperation with the Agency since 1986.

Initially, the Board will issue a cease and desist order requiring Riverside to secure the site against open dumping and to refrain from future waste storage, treatment, or disposal on the site in violation of the Act and Board regulations. The Board will follow the Intervenors' suggestion and not impose a monetary penalty. The Board will not order Riverside to provide an alternative source of drinking water to the Riverside Lawn residents. Such an order is unwarranted by the record. The remaining issue relates to the appropriate disposition of the remaining wastes on the site.

The Board has found that the Riverside site was used to dispose of waste. Under normal circumstances, a facility used for disposal of waste would be required to be designed and operated in accordance with regulations at 35 Ill. Adm. Code

807. While that was not the case here, the Board believes that a site closure that references the regulatory standards that apply to these facilities would assure that no future violation of the Act and Board regulations would remain undetected. Such a closure would also protect the area groundwater from unabated contamination, and it would adequately protect human health and the environment from any remaining waste mound.

The Board's solid waste regulations are drawn for site management in accordance with permits issued by the Agency. Therefore, the Board's determination that Riverside must close the waste disposal site as a landfill will require Riverside to approach the Agency for a permit to close the site under the Part 807 rules. To assure that adequate information is developed to allow an informed Agency decision, the Board will require Riverside to characterize the groundwater flow and quality of groundwater around and under the site. Also, Riverside must characterize the nature of material presently remaining on the site.

For the foregoing reasons, the Board will require Riverside to submit a permit application to the Agency for the closure and post-closure care of its waste management site under the applicable provisions of 35 Ill. Adm. Code 807.

Given the circumstances of this case, the Agency may allow in situ closure or require closure by removal in its permit decision. In so saying, the Board is not inferring that the Agency is limited in its remedies to those normally applicable to a sanitary landfill. The Board will require Riverside to submit this closure and post-closure care permit application to the Agency prior to August 1, 1989. The Board will require Riverside to complete all closure activities in accordance with the permit conditions within one year of the date on which the permit issues, and to fulfill all post-closure care conditions so long as they remain effective.

The foregoing constitutes the Board's findings of fact and conclusions of law in this matter.

## ORDER

The Board hereby finds that Riverside has violated Sections 21(a) and 21(b) of the Act, and orders the Village of Riverside to do as follows:

1. The Village of Riverside shall immediately cease and desist from authorizing any person to engage in open dumping of wastes on its Riverside Lawn property.

2. The Village of Riverside shall immediately cease and desist from any and all treatment, storage, or disposal of new wastes on its Riverside Lawn property.

3. The Village of Riverside shall immediately secure its Riverside Lawn property to prevent any and all persons from engaging in the unauthorized open dumping of wastes on that land.

4. The Village of Riverside shall, prior to August 1, 1989, submit an application to the Agency for a permit for the closure of its Riverside Lawn waste management site under the applicable provisions of 35 Ill. Adm. Code 807. That application, at a minimum, shall characterize groundwater flow and quality around the site, and characterize the waste materials presently remaining at the site.

5. The Village of Riverside shall complete all waste management site closure activities in accordance with the conditions of the permit for site closure and within one year of the date on which the permit for site closure issues. The Agency may require closure by removal as a permit condition.

6. The Village of Riverside shall fulfill all conditions included in the permit for site closure pertaining to post-closure care of the site throughout the entire period they remain effective by permit condition, Board regulation, or statute.

Section 41 of the Environmental Protection Act, Ill. Rev. Stat. 1985, ch. 111-1/2, par. 1041, provides for appeal of final Orders of the Board within 35 days. The Rules of the Supreme Court of Illinois establish filing requirements.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 27th day of April, 1989, by a vote of 7-0.

Dorothy M. Gunn

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board