

ILLINOIS POLLUTION CONTROL BOARD
June 30, 1983

FRINK'S INDUSTRIAL WASTE, INC.,)
)
Petitioner,)
)
v.) PCB 83-41
)
CITY OF ROCKFORD,)
)
Respondent.)

DONALD L. SHRIVER (DOWNEY, YALDEN, SCHRIVER & YALDEN) APPEARED ON BEHALF OF PETITIONER; AND

RONALD SCHULTZ, ASSISTANT CITY ATTORNEY, APPEARED ON BEHALF OF RESPONDENT.

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

This matter comes before the Board on the Frink's Industrial Waste, Inc. (Frink's) March 25, 1983 petition for review of the City of Rockford's (City) February 21, 1983 denial of site Environmental Protection Act (also known as SB 172 and P.A. 82-682). Approval was denied for location of a new industrial waste processing and transfer facility to handle special and hazardous wastes, which Frink's proposes to locate at the southwest corner of Kishwaukee Street and Boeing Drive in the South Bypass Industrial Park, City of Rockford, Winnebago County. The City's denial was based on findings that Frink's had failed to satisfy two of the six criteria of Section 39.2: Section 39.2(a)(2), "that the facility is designed, located, and proposed to be operated that the public health, safety and welfare will be protected", and Section 39.2(a)(3), "that the facility is located so as to minimize incompatibility with the character of the surrounding area and to minimize the effect on the value of surrounding property". Primary objection involves the existence of the Riverdahl School some 2000 feet to the northeast of the site.

Public hearing in this matter was held by the Board in Rockford on June 3, 1983*. At hearing, testimony and argument

*The transcript of the Board hearing will be referenced as "R. _____", and to the record of proceedings before the City as "City Red., Vol. _____, Item _____". The Board's review of the City Record was considerably simplified by the City's fine organization of the materials submitted to it.

were presented by Frink's, argument was made by the City, and testimony and comment were made by various citizens, many of whom had participated in the public meetings and hearings held by the City. Neither party filed closing briefs, Frink's relying on its initial petition, and the City on its reply thereto.

Prior to presentation of a more precise description of the proposed location, design and operation of the Frink's facility, the Board will briefly set forth the proceedings before the City, in the interests of having the facility description in close juxtaposition to the issues in dispute.

PROCEEDINGS BEFORE THE CITY

On November 8, 1982 Frink's filed its Request for Site Location Approval (City Rec. Vol. 1).^{*} Pursuant to the City Council's usual rules, the Request was referred to the standing Committee on Community Development (Committee). A public hearing was held by the Committee on November 18, 1982 (Id., Vol. 2, Item 36). The Committee discussed the Request at its meeting of December 2, 1982, and received additional comment at an informal meeting held December 9 (Id., Vol. 2, Items 37 and 38). A Committee Report was adopted at a January 6, 1983 meeting, recommending City Council approval of the Request, on the basis that all six criteria had been satisfied (Id., Vol. 2, Items 39-40).

The City Council itself had an additional public hearing on January 24, 1983. Prior to the hearing, the City had received written comments from citizens asking questions about the facility (e.g. Id., Items 7, 16), from industry and citizens expressing need for and approval of the Frink's facility (Id., Vol. 2, Items 8, 9, 11, 12, 14, 15, 17-21, 23, 32), from governmental entities expressing lack of specific objection or qualified approval (Winnebago County Health Department--Id., Vol. 2, Item 2; Mayor's Environmental Advisory Committee--Id., Vol. 2, Item 10; Staff Report, Department Community Development--Id. Vol. 2, Item 26), and from citizens and industry opposing the facility (Id., Vol. 2, Items 3, 4, 5, 22, 24, 31, 33, 34). The same range of opinions is reflected in the testimony and 20 exhibits presented at the Council's hearing, the most notable exhibit perhaps being citizen petitions against approval of the site containing 2033 signatures (Id., Vol. 3, p. 6 and Vol. 4A). (Petitions against site approval signed by 365 citizens had previously been submitted to the Committee--Id., Vol. 2, Item 36, p. 10, and Item 37, p. 5, and Vol. 2A.)

^{*}Subsequent submittals supplementing the original application are found in City. Rec. Vol. 2, Items 13 and 25(a-b), Vol. 4, Ex. 3-18, and Vols. 5, 5A-C.

On February 14, 1983 the Council voted to adopt an amended Committee Report denying the Request for failure to comply with the public health, safety, welfare criterion and the location incompatibility criterion, which amended report was adopted by Council resolution February 21, 1983 (Id. Vol. 2, Items 40, 1).

SITE, DESIGN, OPERATION AND LOCATION
THE PROPOSED FACILITY

The Site

The proposed Frink's Rockford facility is intended to process four types of liquid wastes now handled by the existing Frink's Pecatonica facility: alkaline water (5000 gallons per day average), coolant-cuttings oils (3000 gpd avg.), chromium and zinc phosphates (8000 gal. per month avg.), and solvent-water (1000 gpd avg.) (Vol. 1, Table I). Frinks-Pecatonica currently receives 85% of such wastes generated in the Rockford area.

The proposed facility as designed by ERC/Lancy has been referred to as "state-of-the-art". ERC/Lancy works exclusively in the field of design of treatment systems for chemically contaminated wastes, and has designed 2,000 treatment facilities throughout the world over the course of the last 30 years [Id., Vol. 2, Item 25(a)].

Liquids would be unloaded from 5,000 gallon capacity trucks (one at a time) by a quick couple between the truck hose and facility piping. The floored truck ramp where this would occur serves as a spill containment area having a 7724 gallon capacity. Spills would collect in a central spill collection sump with level controls, an alarm system, a pumping system to convey the liquid to a storage tank for processing.

Incoming wastes are to be directed to one of four 10,000 gallon holding tanks dedicated to one of the four particular waste types. Wastes are then sent through a treatment system, the different waste types receiving differing treatments. Reclaimed solvents are to be stored in a 6,000 gallon capacity tank, and reclaimed oils in a 15,000 gallon capacity tank, before they are hauled away. Wastewaters will be directed to an elevated sewer, thence to the Rockford Sanitary District for treatment, and sludges hauled away for proper landfill disposal.

All tanks are covered, and located on a raised 4" pad. Each has an exterior level gauge, an alarm system and pumping system. The waste storage and treatment system is floored, so that all spills will be directed to the floor spill collection system mentioned earlier.

The incoming storage tanks, as well as the oil storage tank, will be vented to a common exhaust manifold, on which a slight

negative pressure will be maintained. This will cause continuous air flow into the tanks, to direct any volatile compounds into an activated carbon chamber. Emission will be through a 2" line, 8' above the ground through the wall at the north side of the building (Id., Vol. 1, Tab I-J, Vol. 2, Item p. 5(a)).

The Location

Frink's proposes to locate in Lot 1 of the Southbypass Industrial Park, which lot is bounded on the north by Boeing Drive, and on the east by Kishwaukee Street. Lot 2, directly to the west of Frink's is occupied by Interstate Pollution Control, which processes industrial oils and wastewater by filtration. There are "several other industrial buildings to the West dominated by the large Greenlee industrial building one block to the west". Immediately to the north of Frink's, north of Boeing Drive but to the south of Route 194 Bypass, US 20 is the "newer and much larger industrial building...occupied by Honeywell Motor Products" (Id., Vol. 5, Ex. C, p. 1). To gain a perspective on the larger area, it is helpful to consider the two pages of the 1971 Supervisors Assessment Map presented by Frink's at the City Council's public hearing (Id., Vol. 4, Item 3), and the 1978 aerial photo submitted at the Board's hearing as hearing Ex. 1. This portrays an area bounded to the north by Sandy Hollow Road (4000 S), to the south by an unlabelled broken line (4500 S), to the west by the Rock River (1000 E) and to the east by another unlabelled broken line (2000 E). The rectangle is bisected on the north-south axis by Kishwaukee Street, a 4 lane highway, and on the east-west axis by the Route 194 Bypass, US 20, which is a 4-lane, limited access divided highway, elevated over Kishwaukee at their intersection.

Immediately to the east of the Rock River and to the north of the bypass is the Rockford Sanitary District (RSD) Treatment Plant. To the east of RSD lies the Kishwaukee Industrial Subdivision and Kishwaukee Street. To the east of Kishwaukee is the Riverdahl School and playground, then railroad tracks, and the Gates Rubber Company. Directly south of Gates and the bypass lies the National Lock Co., which is bounded to the west by the tracks. West of National and directly south of the school is property owned by the Rockford Local Development Corp., bounding property of the Sundstrand Corp. to the north and east with Kishwaukee being the western boundary. The South Bypass Industrial Park is located in the area west of Kishwaukee and east of the Rock River, and is bounded in part at its southwest corner by the Greater Rockford Airport.

The aerial photo, as marked at hearing, diverges from the supervisors assessment map only to the extent that the property directly south of Gates is shown as vacant, and the Sundstrand and National properties being due south of Riverdahl School. The

aerial map also indicates that most of the homes from which the school presumably draws its population are located to the north of the school and Sandy Hollow Road. Some homes are, however, located to the southeast of the Sundstrand and National properties.

THE STATUTORY CRITERIA

The relevant portions of the City's decision are set forth below:

"B. Is the facility so designed, located, and proposed to be operated that the public health, safety, and welfare will be protected?

1. Design: The design of the plant appears to incorporate many features to protect the health and safety of the public.
2. Location. Testimony received at the January 24, 1983, public hearing and the application itself evidence the extremely hazardous nature of the chemicals to be handled. Riverdahl School, an elementary school with approximately 365 students is located approximately 2,000 feet northeasterly of the proposed site and is served by well water. Therefore, despite many proposed design features, the risk to public health should any of these design features fail or accidents in operation and/or transport occur, must be considered. The risk to the health and safety of the children of this school, considering the hazardous waste to be treated, its largely unknown effects, and the southerly direction of prevailing winds, is unacceptable. The public's overwhelming concern about this site location in relation to Riverdahl School is evidenced in the public hearing of January 24, 1983.
3. Proposed Operation. The proposed operation of the facility, if such operation is performed properly and with competent personnel, would appear to provide some protection to the public health, safety, and welfare.

C. Is the facility located so as to minimize incompatibility with the character of the surrounding area and minimize the effect on value of surrounding property? No.

1. The opinion of Appraiser Dale Scott states that devaluation of property will not occur due to the addition of another industrial firm. However:
2. Correspondence received from Honeywell, Inc., which has a facility on the adjacent parcel, indicates incompatibility due to the existence of one pollution

control facility in the Industrial Park already. Therefore, the use of this area for general industrial purposes may deteriorate into an exclusive site for disposal facilities.

3. The site is incompatible with the nearby location of Riverdahl School, due to the inherent risks of handling hazardous wastes. Short of relocating the school, it is doubtful that satisfactory measures could be taken to further minimize this incompatibility." (Id., Vol. 1, Item 1.)

The issues then boil down to location of the site as it relates to Honeywell, and as it relates to the school.

The Honeywell Objection

Honeywell's opposition was first expressed in a 3 sentence, 3 paragraph written comment stating in relevant part

"We believe that one such [waste processing] establishment; (sic) namely, Interstate Pollution Control Company of 4430 Boeing Drive is enough in an industrial park." (Id., Vol. 2, Item 22.)

At hearing, Honeywell presented a six sentence statement. The three relevant sentences are as follows.

"I believe that this area needs a new waste disposal site, but not here... You already have one disposal site. You add one more, and the neighborhood goes you know where, and what happens to Honeywell and Greenlee's investment there?" (Id., Vol 3, p. 48-49.)

As the City noted, appraiser Dale Scott was of the opinion that

"After considering the improvements in the neighborhood, it is my opinion that if the proposed Frink's (sic) [site] is constructed according to the plans and specs there will be no damage to the surrounding properties whether industrial, commercial or residential." (Id., Vol. 5, Ex. C).

This opinion was contained in a nine-paragraph, two page letter. Mr. Scott recited his qualifications as including 20 years doing real estate appraisal 100% of his time, the current presidency of the Rockford Chapter of the Society of Real Estate Appraisers, and membership in the Real Estate Boards and Multiple Listing Exchange Services of both Rockford and Beloit (Ibid.)

The Board finds that it was against the weight of the evidence for the City to conclude based on Honeywell's unsupported opinion and fears, that the industrial park would "deteriorate into an exclusive site for disposal facilities". The "floodgates" would not be opened if the second of two waste treatment facilities were to be established. The City itself has some control over this through the SB 172 process, and might properly deny site location suitability approval if another facility were not "necessary for the area intended to be served" (Waste Management of Illinois, Inc., v. Lake County Board et al., PCB 82-119, December 30, 1982, p. 8). In addition, the record clearly shows that much of the Industrial Park has already established other general industrial uses.

The Riverdahl School Objection

The City's incompatibility finding and its negative health, safety, welfare finding concerning location are each essentially based on "the inherent risks of handling hazardous wastes", and the special susceptibilities of school children.

The City points out that the Board has acknowledged that local government might reasonably review SB 172 approval applications at different levels of concern, depending on the type of waste involved--general, special, or hazardous, Waste Management of Ill. Inc. v. Board of Supervisors of Tazewell County, PCB 82-55, August 8, 1982, p. 9. Proximity of a regional pollution control facility to a school is an appropriate subject for a high level of concern and a close scrutiny of an application. However, absent a legislative per se rule stating how close is too close, the Board is required to determine whether the facts in the record support the City's adjudication on this, as well as other, points.

One element to be considered is the nature of the wastes, hence the degree of hazard. Frink's introduced evidence that the flammability of the elements in its waste streams is less than many gasolines and solvents in general use and transportation in the Rockford area (City Rec., Vol 2., Item 13). This was acknowledged by a representative of the Rockford Fire Department, who saw no potential fire hazard except concerning non-water soluble solvents (Id., Vol. 2, Item 36, p. 5). Frink's argued that the City's designation of its wastes as "extremely hazardous" is incorrect. The City admits that this is a "laymen's" description, rather than an attempt to draw a non-existent legal distinction between "extremely" hazardous and hazardous wastes. The Board notes that at least some of Frink's wastes, particularly solvent wastes commonly generated by industry, are carcinogenic and legally classified as "hazardous" to come in contact with. However, the Board finds that the risks posed by the Frink's wastes are mitigated by the fact that they are diluted with water from 10% to 90%, depending upon the type of wastes, and by the containment methods included in the facility design.

Another element to be considered is the nature of the proposed pollution control facility. Specific pollution concerns alluded to by the City are problems of contamination of the groundwater serving the schools wells and odor problems caused by emission of volatile organic compounds. These concerns are the subject of much testimony and many exhibits at hearing, much of which relates to problems at another site operated by Frink's in Pecatonica: groundwater contamination continuing since June, 1982, and odor problems experienced in the area around that site prior to 1982 (e.g. Id. Vol. 4B).

Frink's has argued that its operation of its Pecatonica facility cannot properly be considered by the City as reasons for denial under Section 39.2, since Section 39(f) of the Act provides that the Agency is to consider an operator's prior history when it is evaluating a permit request. The City acknowledged this in its resolution, and did not base its denial on grounds of Frink's operation of the Pecatonica site. The Board will therefore mention the Pecatonica site here only because so much of this record is comprised of exhibits and testimony relating to that facility.

The facts of the Pecatonica groundwater contamination are set out in some detail in a permit denial appeal, Frink's Industrial Waste, Inc. v. IEPA, PCB 83-10, June 30, 1983, and will not be set forth in detail here. However, the contamination began to appear after an abandoned lagoon containing sludge residues was opened, excavated, and allowed to remain open during a month long period in which 11 inches of rain fell. Underground storage tanks containing oil and solvent residues are also present on the site, although these tanks are in the process of being emptied and put out of service. As indicated in the portions of the permit appeal record submitted to the City by Frink's, the Agency and Frink's hotly dispute the cause and source of the groundwater contamination (Id., Vol. 5C). The proposed Frink's-Rockford facility is designed precisely to avoid groundwater contamination with above ground tanks and piping and spill containment measures to keep wastes off the ground.

Frink's asserts that odor problems at the Pecatonica site may in large part have been caused by a hog waste lagoon located to the north and east of that site (Id., Vol. 4, Items 4 and 7). In any event, odor complaints have become minimal since 1982, after closure of sewage and oil lagoons and the sealing covering, and venting to carbon units of the storage tanks. The design of the Rockford facility is again such as to prevent odor problems caused by emission of volatile organics to the air, since the storage treatment area is totally enclosed, and potential emissions from tanks and piping are vented through carbon filters prior to their release outside.

The City in its resolution acknowledges that the proposed Frink's facility is designed to prevent these risks, and that Kishwaukee Street, the proposed route by which 3 tanker trucks

will daily reach the Frink's site, is a four-lane arterial street which should be able to handle the additional volume of traffic. The City's conclusion is that, even though risks to health have been minimized, the possibility of design failures and operational or transport accidents pose an unacceptable element of risk to the health of the Riverdahl school children. Reduced to its essence, the conclusion is that any element of risk is unacceptable, and that no "satisfactory measures could be taken to further minimize [the] incompatibility" of the proposed Frink's site with the school, since there is no way to guarantee that failures and accidents will not occur.

The Board cannot sustain this conclusion. Section 39.2 speaks of "minimizing" incompatibility, dangers from accidents, and impacts on traffic flows, and "protecting" of public health. It does not speak of "guaranteeing no increase of risks" concerning any of these criteria.

This record does not indicate that the Frink's building would be an "attractive nuisance" to children in and of itself. The barriers presented by the bypass highway, Kishwaukee St., and the proposed location in the industrial park pose more physical barriers and actual separation than would be usual between facilities located 2000 feet "kitty corner" of one another. The record would indicate that the predominantly industrial nature of the area as a whole, and the fact that the area serves as an air, rail, and highway transportation nexus, leads the City's Fire Department and Sanitary District to keep a watchful eye on the area because of the inherent increase in the magnitude and nature of hazards associated with industrial as opposed to residential developments. The ERC/Lancy facility design has not been challenged. Based on its own review of the record, the Board can find no special circumstance which can support the City's conclusion that the proposed Frink's site is located too close to the Riverdahl School. The City's denial of site location suitability approval is reversed.

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


ORDER

The City of Rockford's February 21, 1983 decision denying site location suitability approval to Frink's Industrial Waste, Inc. is hereby reversed.

IT IS SO ORDERED.

Board Chairman J. Dumelle concurred.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 30th day of June, 1983 by a vote of 4-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board