ILLINOIS POLLUTION CONTROL BOARD
October 10, 1985

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| LANDFILL EMERGENCY ACTION COMMITTEE, an Unincorporated Association, | ) | |
| Complainant, | ) | |
| v. | ) | PCB 85-9 |
| MCHENRY COUNTY SANITARY LANDFILL AND RECYCLING CENTER, INC., an Illinois Corporation, | ) | |
| Respondent. | ) | |

INTERIM ORDER OF THE BOARD (by J. Anderson):

The Proposal

This matter comes before the Board on the eight count complaint filed January 23, 1985 by the Landfill Emergency Action Committee (LEAC) against the McHenry County Sanitary Landfill and Recycling Center, Inc. (MCSL). In general, the complaint charges MCSL with improper operation of its sanitary landfill located in McHenry County, the allegations being based on inspection reports prepared by the Illinois Environmental Protection Agency (Agency) since 1974. At a hearing held September 3, 1985, at which no members of the public were present, the parties presented a "Joint Stipulation of Facts and Proposal for Relief", which was filed with the Board September 10, 1985. The Agency inspection reports were attached thereto as Exhibit A.

The parties' proposed stipulation recites that it is presented for the purpose of eliciting "findings of fact and conclusions of law from the Board, along with the approval by the Board of the compliance plan." (Stip., p. 1) The compliance plan, a response to the Count V leachate discharge allegations, involves MCSL's arrangements for closure and post-closure care of the facility; this will be described in detail below.

As to a penalty proposal and amendment of the terms of the settlement, the parties agree that:

> "there is no evidence of adverse impact on the environment, no penalty other than that described above is warranted. Nevertheless the Board is free, under the terms of this stipulation, to make such findings and to impose such different or additional relief as it believes is necessary and appropriate.

> Should different or additional relief be imposed by the Board, both parties reserve the right to challenge the reasonableness of such relief on appeal." (Stip., 15)

All Counts except for Count V have been addressed by the parties in fairly summary fashion; Count V will therefore be discussed last.

Count I of the Complaint alleges failure to apply daily cover on 57 dates between 1974 and 1983; Count II alleges failure to apply intermediate cover on 48 dates between 1976 and 1980; and Count III alleges failure to apply final cover on 14 occasions between 1976 and 1980, all in violation of Section 21(d)(2) of the Environmental Protection Act and of applicable subsections of 35 Ill. Adm. 807.305.* Concerning these Counts, the stipulation recites that:

> "Some of those temporary deficiencies resulted from inclement weather, while others were caused by difficult working conditions or by not having sufficient men and equipment on the site at all items. The number of operators and the equipment on site now are adequate to apply daily and intermediate cover as required and to properly maintain the final cover on those portions of the site which are already closed." (Stip. 7)

Count IV alleges failure to collect litter at the end of 22 working days between 1975 and 1983 in violation of Section 21(d)(2) of the Act and 35 Ill. Adm. Code 807.306. As to this Count, the stipulation notes that, although litter was blown away from the working face of the landfill, that litter was never observed by the Agency blowing off-site (Stip., 8).

Count VI alleges failure to spread and compact refuse on June 25, 1982 in violation of Section 21(d)(2) of the Act and 35 Ill. Adm. Code 807.303(b). Count VII alleges failure to deposit refuse at the toe of the fill on February 25, 1975 and March 27, 1979, in violation of Section 21(d)(2) of the Act and 35 Ill. Adm. Code 807.303(a). The stipulation states that MCSL does not believe that any specific changes in its operation are necessary, given that only three such incidents were reported in eleven years (Stip., 9).

Count VIII alleges failure "to otherwise comply" with permit conditions on 16 occasions between 1975 and 1983, in violation of Section 21(d)(2) of the Act and 35 Ill. Adm. Code 807.302. The parties agree that:

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* The Complaint cites the pre-codified version of the Board's rules as found in old Chapters 7 and 9. This Order refers to the codified section numbers.

> "These have each been corrected and were only part of the normal process of site development. For example, a portion of the site would be closed, the IEPA would observe that the slope on a side of the site was too steep and MCSL would correct it. No permit deficiencies exist today." (Stip., 11).

Count V alleges that MCSL caused or allowed the discharge of leachate into the environment so as to cause or tend to cause water pollution on 29 dates between 1978 and 1983, in violation of Section 21(d)(2) of the Act and 35 Ill. Adm. Code 807.313. The stipulation states:

> "The IEPA inspection reports disclose observations of surface leachate. The leachate is described as seeps, flows and ponds. None of the leachate has ever been observed leaving the site. The leachate reported by the IEPA resulted either from erosion at areas of the site not completely vegetated or the fill settling in closed areas. Both of these problems will continue to occur sporadically until the site is entirely closed with final contours and complete vegetation in place. MCSL regularly inspects the site and performs remedial maintenance to correct these problems. Because of the drainage system engineered at the site such problems are contained and the leachate is channeled back into the fill. The relief agreed upon by the parties and described below is intended to insure that erosion and settling at the site are properly and finally resolved." (Stip., 10).

Board Comment

The acceptability of the compliance plan, then, is the primary issue for Board consideration, given the above factual statements and the parties' invitation to the Board to make findings of violation. 35 Ill. Adm. Code 807.605 provides that the Board:

> "may order modifications in permits to change the type or amount of financial assurance pursuant to an enforcement action ... [and] may order a closure or post-closure care plan modified, and order proceeds from financial assurance applied to execution of [such] plan."

MCSL's current permit outlining its closure, post-closure care obligations is not a part of this record. The Board is incapable of assessing the reasonableness of this proposed compliance plan as required by Section 33(c) of the Act based on the information supplied by the parties. As a general matter, the Board notes that the parties have not adequately explained the relationship of any violations to the compliance plan, and

have not provided other than the bare outlines of a program which does not really specify what "compliance" is.

More specifically, the first condition involves a $30,000 increase in the amount of the existing trust fund to $109,800, $79,800 being the amount required to satisfy the Board's regulations 35 Ill. Adm. Code 807.501 et seq. The parties have provided no basis for their choice of this $30,000 figure. The second condition proposed is that:

> "regardless of the length of time covered by the Trust and required by the IEPA pursuant to the regulations of this Board for post-closure care, 3 years after the closure of the facility MCSL may withdraw all funds remaining in the trust account except for the sum of $10,000, or the then existing balance if less than $10,000 remains in the account, which shall remain for an additional 10 years (to the 13th year following closure), under the same terms and conditions as earlier applicable."

Again, no basis is provided for the choice of 10 years as an additional post-closure care period, or of $10,000 (or less) as the sum to assure performance. Equally importantly, the nature of that performance has not been specified, and removal of the Agency's oversight regarding the timing and amount of release of funds pursuant to the Board's performance bond regulations has not been justified.

It does not appear to the Board, based on this record, that the parties have fully considered the details of implementation of their loosely drafted proposal; the Board suggests that this may not be possible absent preparation of the revised closure, post-closure plan and draft language to be included in any modified permit whose issuance the Board might order as a result of this enforcement action. For instance, assuming $30,000 is to be added to the Trust Funds, is it all to be deposited immediately? Section 807.603 requires upgrading of financial assurance under certain conditions; is the fund always to contain $30,000 in excess of the cost estimate established pursuant to the regulatory requirements? Is the additional ten year post-closure period to be added on to any more stringent regulatory requirements which the Board may in the future adopt? The foregoing list of examples is not exhaustive of the details which, in the absence of clear expression of the parties' intent, could become the subject of permit appeals embroiling the Agency and the Board to no good effect.

The parties are therefore given 45 days in which to supplement their proposed stipulation and settlement; failure to do so will result in its rejection by the Board, and entry of an order to proceed to hearing. Finally, as a matter of procedure, the Board wishes to advise the parties as to the effect of Board acceptance of any stipulated settlement to which the Board has

made amendments pursuant to the parties' invitation. The Board will, as is its practice, request the parties to certify their acceptance of the amendment. In the event of failure to so certify, hearing will be ordered to provide any litigated record necessary for a Board determination as well as appellate review.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board hereby certify that the above Interim Order was adopted on the 10th day of October, 1985, by a vote of 7-0.

Dorothy M. Gunn

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board