

ILLINOIS POLLUTION CONTROL BOARD
August 26, 1982

ILLINOIS ENVIRONMENTAL PROTECTION)
AGENCY,)
Complainant,)
v.) PCB 81-98
WASTELAND, INC., an Illinois)
Corporation, VERNON LAMOREAUX,)
DENNIS LAMOREAUX, ROGER PEMBLE,)
and WASTE RESOURCES CORPORATION,)
an Illinois Corporation,)
Respondents.)

MR. GERHARDT BRAECKEL, ASSISTANT ATTORNEY GENERAL, APPEARED ON BEHALF OF THE ENVIRONMENTAL PROTECTION AGENCY; MR. BRIAN O'HARA, ARNOLD AND KADJAN, APPEARED ON BEHALF OF RESPONDENTS WASTELAND, VERNON LAMOREAUX AND ROGER PEMBLE.

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

This matter comes before the Board upon a complaint filed on June 12, 1981 by the Illinois Environmental Protection Agency (Agency) as amended on November 17, 1981. Thirteen days of hearing were held commencing on January 6 and ending on March 9, 1982 at which the parties, other than Vernon Lamoreaux and Waste Resources Corporation, and several members of the public were present. The Agency filed its closing brief on June 11, 1982. Respondents filed their closing brief on July 22, 1982 and the Agency filed its reply brief on July 30, 1982 along with a motion for expedited decision, which motion is hereby granted.

This case involves the operation of a landfill (Permit No. 1976-13-DE and OP: hereinafter "the landfill") which is not allowed to accept putrescible, combustible or flammable general refuse, and a cardboard and paper "recycling" operation (hereinafter "the paper site") located near the landfill in Will County near Lockport, Illinois, for which application for permit was made and denied. Both sites are bordered to the west by railroad tracks and to the east by Route 171 and are separated by a distance of approximately 1000 feet (see Compl. Ex. 124).

The complaint is divided into eleven counts alleging both permit and operating requirement violations. These counts are summarized below:

Count I: Operation without a permit from June 1, 1980 through October 19, 1980 in violation of Rule 202(a) of Chapter 7: Solid Waste, and Section 21(d) of the Environmental Protection Act (Act);

Count II: Acceptance and disposal of unpermitted refuse from October 20, 1980 and continuing through the date of final hearing in violation of Solid Waste Rules 210, 301 and 302 and Section 21(d) of the Act;

Count III: Volume violations during the same period and in violation of the same Rules and Section of the Act as Count II, above;

Count IV: Daily cover violations during the same period in violation of Rules 210*, 301, 302 and 305(a) and Sections 21(a) and (d) of the Act;

Count V: Modification of the landfill without a permit from February 27, 1981 through the date of hearing in violation of Rules 210, 301 and 302 and Section 21(d) of the Act;

Count VI: Leachate discharge from October 20, 1980 through the final date of hearing in violation of Rules 210, 301, 302, 313, 314(e) and 315 and Section 21(d) of the Act;

Count VII: Scavenging at both sites during the same period of time in violation of Rules 210, 301, 302, 307 and 308 and Sections 21(a) and (d) of the Act;

Count VIII: Roads and dust control during the same period in violation of Rules 301, 314(b), (f) and (g) and Section 21(d) of the Act;

Count IX: Disposal at the Paper Recovery Site from November 1, 1980 until the date of final hearing in violation of Rules 210, 301 and 302 and Section 21(d) of the Act;

Count X: Disposal of fire debris from May 4, 1981 through the date of final hearing in violation of Rules 210, 301 and 302 and Sections 21(a), (d) and (e) of the Act; and

Count XI: Open burning from November 1, 1980 through the date of final hearing in violation of Rule 502(a) of Chapter 2: Air Pollution, Rules 210, 301, 302 and 311 and Sections 9(a) and (c) and 21(a) and (d) of the Act.

PRELIMINARY MATTERS

In its closing argument the Agency moved to dismiss Dennis Lamoreaux (due to its inability to complete service upon him prior to hearing) and to strike and dismiss Count X. There being no objection to those motions, they are granted and Dennis Lamoreaux and Count X are hereby dismissed without prejudice.

*All Rules cited refer to Chapter 7: Solid Waste, unless otherwise indicated.

Waste Resources Corporation, though properly served, failed to appear at hearing and is hereby held in default pursuant to Section 103.220 of the Board's Procedural Rules.

A motion to dismiss Vernon Lamoreaux was made orally at hearing on July 6, 1982 (R. 6-8), and shortly thereafter was filed with the Board. By Order of July 21, 1982, that motion was denied. However, he continues to argue that he is not an owner of the subject properties and, therefore, cannot be held liable for any of the alleged violations.

Lamoreaux contends that if he were an owner that he would also have appeared as lessor for the landfill and the paper site but that his son, Dennis Lamoreaux appears as lessor of the landfill (Compl. Ex. 3) and the Bank of Lyons as Trustee under Trust Number 2478 appears as lessor for the paper site (Compl. Ex. 30). He contends further that he has no legally vested interest in the title to either property in that his son owns the entire beneficial interest (Compl. Ex. 3). Finally, he has visited the property only twice since Wasteland, Inc. leased it, and he argues, therefore, that he had no control over the other respondents (Compl. Ex. 167, pp. 31 and 39).

On the other hand, the Agency contends that Vernon Lamoreaux is either the owner in fact or is estopped from denying his ownership. Roger Pemble, the operator of both sites, was under the impression that Vernon Lamoreaux was the owner (Reg. to Admit, #6), he is listed as landowner in the original application for permit (First Am. Compl. Ex. F, p. 2), has been named as one of the permit holders since the permit was issued (First Am. Compl. Ex's. A-E), requested and obtained a transfer of the permit to Roger Pemble while purporting to be the landowner (First Am. Compl. Ex. E and Compl. Ex. 167, p. 34), has received one half the rent for the landfill and all of the rent for the paper site (Compl. Ex. 167, pp. 18-19 and R. 1483-1485).

Under all the facts of this case, the Board finds that Vernon Lamoreaux does stand in such a relationship to the subject properties that "it is reasonable to expect him to exercise control to prevent pollution" (EPA v. James McHugh Construction Company, PCB 71-29, May 17, 1972, 4 PCB 511). Vernon Lamoreaux held himself out as owner of both properties to both Roger Pemble and the Agency and will be treated as such.

In addition to the evidence cited by the Agency, he testified that he had discussions with Pemble about the landfill site in July of 1981 (Compl. Ex. 167, pp. 40-41). He "told him he better go according to Hoyle or...[he'd] get [his] double barrel" (Compl. Ex. 167, pp. 41-42). He also discussed operations with his son and told him "to check it out for me" (Compl. Ex. 167, pp. 42). Finally, regarding the ownership of the land he stated "It's always been in my possession, I guess, until I put it in a trust. But I still leased out the land and whatever I wanted to do with it. I don't think Roger even knew I had it in a trust... I've always done this before. I guess I've always had it in a trust." (Compl. Ex. 167, p.45).

COUNT I

Count I charges Roger Pemble and Wasteland, Inc. with operating the landfill without a permit prior to October 20, 1980 when the Agency granted a transfer of Permit No. 1976-13-OP to Roger Pemble. Vernon Lamoreaux is charged with allowing Roger Pemble and Wasteland, Inc. to operate the landfill before the permit was transferred.

It is not disputed that the transfer of the landfill operating permit was not granted until October 20, 1980 (Admission No.4, First Am. Compl. Ex. E). However, Roger Pemble leased the landfill on May 27, 1980 (Compl. Ex. 3). According to Respondents Answer to Interrogatory No. 7, a clean-up operation of the landfill site began May of 1980 and refuse collection and acceptance did not begin until August of 1980. However, Jeff Stofferahn, an Agency field inspector, first inspected the landfill site on July 18, 1980 (Compl. Ex. 11, pp. 369-370) where he met with Ed Kanive, secretary-treasurer of the landfill, who told him that Wasteland was cleaning up the old operation and accepting a few loads of demolition waste and landscape refuse. Stofferahn informed Kanive that they could not accept refuse at the site until the permit was transferred to Wasteland.

During an inspection of the landfill on August 11, 1980 (371, 375, CX12), Stofferahn spoke with Roger Pemble who identified himself as the manager, Ed Kanive as one of the owners of Wasteland, and Vernon Lamoreaux as the owner of the land (Compl. Ex. 12, pp. 371 and 375). Stofferahn observed little change in the site, but Pemble said they were cleaning it up and currently were receiving only a few loads of demolition refuse per day.

The early cash receipts records kept by Ed Kanive show that Wasteland received at least \$20,000 for the refuse dumped in the landfill before October 20, 1980 the day the permit transfer was granted (Compl. Ex. 162, pp. 1472-1473). Also between August 22, 1980 and October 19, 1980, Wasteland, without a permit (Resps. Adm. No. 13) accepted or disposed of refuse at the landfill on a daily basis (Compl. Ex. 5, Interrog. No. 31).

The site was also in operation September 16, 1980 (Compl. Ex. 13), at which time Stofferahn observed a large pile of exposed film, cardboard and paper from Kodak at the fillface (661, CX13) which he had not observed on previous inspections (Compl. Ex. 16 and R. 661). He did not observe the Kodak material itself being covered (R. 663), but did observe a bulldozer spreading and compacting refuse at the fill face (Compl. Ex. 13).

Respondents argue that they acted in good faith in that operations prior to permit transference were largely clean-up operations, that they were unaware that a permit transfer was needed and that they applied for one as soon as they were informed one was needed (R. 1647, Compl. Ex. 12 and 162). However, these facts, even if proven do not rebut the violation.

The Board, therefore, finds that Respondents operated the landfill without a permit from June 1, 1980 through October 19, 1980 in violation of Rule 202(a) and Section 21(d) of the Act.

COUNT II

This Count II charges that Roger Pemble and Wasteland, Inc., accepted and disposed of putrescible, combustible or flammable refuse at the landfill in violation of the restrictions of Permit No. 1976-13-OP and that Vernon Lamoreaux allowed it.

The text of the permit letter itself states as follows:

Permit is hereby granted...to operate a solid waste disposal site consisting of 9.26 acres...to handle brick, concrete, pavement, glass, clay, tile, ceramics, cement and other non-putrescible, non-combustible solid waste, excluding all flammable general refuse, all liquids and hazardous waste, unless otherwise authorized by supplemental permit...(First Am. Compl. Ex. D).

Thomas Cavanaugh, Manager of the Residuals Management Section of the Agency's Division of Land and Noise Pollution Control, testified that organic materials and materials capable of supporting combustion were excluded from the site by the permit. Among the prohibited wastes were paper, cardboard, garbage, plastic and landscape wastes, (R. 1026), and Pemble was aware of that (R. 1709).

"Disposal" as defined in relevant part by Section 3(e) of the Act is:

the discharge, deposit, injection, dumping, spilling, leaking or placing of any waste into or on any land or water so that such waste may enter the environment or be emitted into the air or discharged into any waters including ground waters.

The disposal of Piolet material at the landfill is not really disputed. Large quantities of Piolet material were disposed of on the landfill between October, 1980 and July, 1981. The Piolet material was composed of commonly known combustible materials. Thomas Barnett, who hauled in the Piolet material for three months, testified that it was shredded auto interiors (11-12). Pemble told the Will County inspectors, Vollmer (R. 945 and Glasgow (1296), that the Piolet material was non-ferric auto waste, and he explained to Glasgow that Piolet Bros. crushed and shredded automobiles and then separated the ferric parts from the non-ferric (R. 1296). Stofferahn described the Piolet material as consisting of ground up pieces of foam rubber and cloth-like material such as would be found in auto seats and pieces of rubber and plastic such as rubber hoses found in autos (R. 551). Barnett said some of the rubber heater hoses had metal wire inside them (R. 11-12). Glasgow also recognized spark plug wires and radiator hoses (R. 1296).

Moreover Pemble admitted that the landfill was not allowed to take combustible materials such as the Pielet material, during a compliance conference held by the Will County Health Department on July 1, 1981 (R. 1300-1301).

Also on July 15, 1981 Glasgow observed smoke coming from an area where the Pielet material was piled up and he noted that the smoke smelled "like the smell you would get if you are burning something like Pielet Bros. material, like plastics or rubber" (R. 1336-1442). The issue of disposal of paper and cardboard is disputed. Pemble claimed that all of the paper and cardboard dumped at the landfill was removed and taken to the paper recovery site (R. 1652-1654 and 1735-1736). Even the person in charge of applying cover to the landfill since July 1981, Tom Barnett, who is also Roger Pemble's brother-in-law, testified that paper and cardboard were the predominant types of refuse which were regularly buried on the site (R. 20-38*). Moreover, Stofferahn and Glasgow visited the landfill site frequently and at various times of the day and yet never observed any machinery loading paper or cardboard into drop boxes (R. 1001, 1314-13-16).

The following is a summary of observations made of materials accepted at the landfill.

| Date | Citations | Observations |
|----------|--|---|
| 10/23/80 | Compl. Ex. 14 R. 412-414 | Refuse at fill/face primarily cardboard paper, scrap wood, Gypsum board. Pielet material used as cover. |
| 11/26/80 | R. 825-830, 936-938 | Paper, cardboard and wood observed on landfill. |
| 12/1/80 | R. 830-833, 938-940 and Compl. Ex. 15. | Paper and cardboard being compacted and covered. Fill face of 80x35 yd. consists mostly of wood, paper, and cardboard and being covered by Pielet material. |
| 12/2/80 | R. 834 | Paper and cardboard being accepted. |
| 12/23/80 | R. 840-847, 943-946 and Compl. Ex. 72 | Cardboard and loose papers being covered with Pielet material. |
| 1/5/81 | Compl. Ex. 16 | Same as 12/23/80 |

* The transcript of the second day of hearing begins on page 1. Thereafter all transcripts are numbered consecutively. Unless otherwise noted, transcript numbers will refer to Volumes II-XIII.

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| 1/21/81 | R. 851-857 and Compl. Ex. 73-78 | Paper, cardboard, wood, plastic bags, and household refuse on site. |
| 2/3/81 | R. 415-416 and Compl. Ex. 17 | Six or seven loads of paper and cardboard spread and covered with Piolet material. |
| 2/5/81 | R. 864-867 & Compl. Exs. 82-86 | Cardboard, paper, plastic and fiberboard barrels, wood and two 55-gallon metal drums. |
| 3/5/81 | R. 878-879 and Compl. Exs. 87-89 | Cardboard, paper, plastic, tire, plastic bags, cardboard tubes and a semi-liquid material. |
| 3/11/81 | R. 420 and Compl. Ex. 18 | Nearly all of fill face composed of unpermitted material; 30 yds. x 20 yds. x 1 foot compacted, 15 yds. x 30 yds. x 2 ft. uncompacted. |
| 3/27/81 | Compl. Ex. 19 | 684 cubic yds. accepted (excluding Piolet material) nearly all paper, cardboard, wood and cellophane. |
| 4/9/81 | R. 487-489 | Piolet material, paper, tar paper. |
| 4/28/81 | R. 422-423 and Compl. Ex. 21 | Fill face mostly paper, card- board, landscape refuse and tires. |
| 5/15/81 | Compl. Ex. 23 | Cardboard, paper and wood deposited at fill face. |
| 5/22/81 | Compl. Ex. 24 | Same as 5/15/81 plus plastic and metal. |
| 6/2/81 | R. 424-425 and Compl. Ex. 25 | Covering plastic, paper, cardboard and wood; other unpermitted refuse visible. |
| 6/18/81 | R. 427-432 and Compl. Ex. 31 | Wood, landscape waste, card- board, paper, household refuse, fly ash appearing substance, Piolet material, dead dog. |
| 7/1/81 | R. 1288-1297 and 1396-1400, Compl. Exs. 127-130 | Paper, cardboard, wood, plastic barrel partially covered with Piolet material, some clay cover. Piolet refuse covered area of 125-150 yds. |

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| 7/10/81 | R. 436 and Compl. Ex. 32 | Wood, landscape refuse, tires and garbage mixed and partially buried. |
| 7/23/81 | R. 437-438 | Tile, cardboard, landscape refuse, plastic and wood being compacted. |
| 8/12/81 | R. 438-449 and Compl. Ex. 34 | Wood, paper, cardboard, plastic, landscape waste and Piolet material both being compacted and generally strewn over area. |
| 8/21/81 | R. 452-453 and Compl. Ex. 35 | Asphalt roofing, wood, tires, plastic and paper was majority of refuse being dumped. Card- board and carpeting exposed. |
| 8/21/81 | R. 890-891 and 965-973 | Smoke from underground fire. |
| 9/1/81 | R. 455-457 and Compl. Ex. 36 | Domestic garbage, paper, cardboard, landscape waste and tires. |
| 9/9/81 | Compl. Ex. 37 | Most refuse being dumped was paper, cardboard, wood, plastic and tires. |
| 9/15/81 | R. 458 and Compl. Ex. 38 | 60% of fill face visible and none consisted of permitted material. Plastic, wood and cardboard. |
| 9/16/81 | R. 491-496 and Compl. Ex. 39 | Much of fill face cardboard, paper, domestic refuse, garbage, plastic, some fibrous material. |
| 10/7/81 | R. 459-460 and Compl. Ex. 40 | 625 cubic yds. of cardboard, paper, wood, garbage, various metal and plastic items, some ink-shredded paper mix. |
| 10/15/81 | R. 1311-1314 and Comp. Exs. 131-133 | Bales of paper and garbage broken up and compacted. Paper and cardboard partially covered. |
| 10/21/81 | R. 466-469 and Compl. Ex. 41 | Fill face 65% paper and cardboard, 15% plastic, 15% wood, 5% tires, |

municipal garbage, paper and ink mix. Total about 280 cubic yds. Smoke visible, other similar wastes on site plus cans and foam-like material.

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| 11/3/81 | R. 474-475 and Compl. Ex. 42 | Fill face 40% paper and cardboard, 40% municipl refuse, 20% wood, tires, etc. Total of 1800 cubic yds. Refuse exposed through cover. |
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Similar observations were made on November 24, 1981 (Compl. Ex. 43); December 14 and 15, 1981 (R. 1323-1332 and Compl. Exs. 135, 136, 141 and 142); January 2, 1982 (R. 909-910, 969-970 and Compl. Exs. 106-110); February 10, 11, and 12, 1982 (R. 922-924); and February 15 and 17, 1982 (R. 1348-1355, 1428-1429 and Compl. Exs. 144, 145, and 157-160). On February 24, 1982 a black, watery, sludge-like material was being dumped on part of the western slope of the landfill and the slope condition remained unchanged through March 2, 1982 (R. 1355-1356, 1369 and Compl. Ex. 144).

Respondents contend that the allegations of this Count remain unproven, that observation reports should not have been admitted as evidence, that Piolet material has not been shown to be combustible and that paper and cardboard were separated out from other materials. However, none of these arguments are meritorious.

First, the observation reports were properly admitted. They were established to be business records, the persons most responsible for their preparation were available at hearing, and there is considerable testimony aside from the reports themselves which establish the same facts. Second, Piolet material is composed of material commonly known to be combustible and has been found by the Board to be "easily ignitable" (IEPA v. Piolet Bros. Trading, PCB 80-185, 44 PCB 222; December 17, 1981). Third, while the respondents argue that 80 percent of the cardboard and paper is separated out, even accepting that figure, 20 percent remains. Further, as noted earlier, Barnett, who worked the site testified that cardboard and paper were the predominant waste buried in the cells (R. 38). Finally, Respondents do not even attempt to argue that unpermitted wastes other than Piolet material, paper and cardboard were not buried on the site.

Therefore, the Board finds that the Agency has proven that Respondents Wasteland, Inc., Vernon Lamoreaux and Roger Pemble violated Rules 210, 301 and 302 and Section 21(d) of the Act by accepting and disposing of unpermitted waste.

COUNT III

In Count III Complainant alleges that Respondents accepted more than the permitted volume of refuse at the landfill. Complainant argues that the landfill could not lawfully accept more than 500 cubic yards per day, 3,000 cubic yards per week or 156,000 cubic yards per year. Those figures are based on the response to Part V-A, No. 30 of the 1976 application which asks for the estimated quantity to be handled. Volume is normally to be estimated by the number of trucks received.

Where an estimated number is requested in a permit application, and where it is not otherwise made clear that such an estimated number will be binding as a legally enforceable limitation, the Board will not find a violation absent proof of a gross exceedence of the estimate.

In this case there is proof, by way of admissions and estimated volumes at the fill face, of up to 600 cubic yards per day received (R. 922-924 and Compl. Exs. 16, 18, 19 and 40). However, the Board does not find these to be gross exceedences and will not find a violation based upon them. On the other hand, in response to Interrogatory 52, Respondents admitted to weekly receipts averaging over 10,000 cubic yards for the period of July 13, 1981 to October 17, 1982 which is more than three times that allowed (Compl. Ex. 5). The least amount accepted during that period was 8,672 cubic yards per week and the maximum was 12,267. While Respondents argue that much of this was sent to Waste Resources for recycling, that is irrelevant to finding a violation in that such material must, at least, be considered to have been handled in some way.

Therefore, the Board finds that Respondents have violated Rules 210, 301 and 302 and Section 21(d) of the Act from July 13 to October 17, 1981.

COUNT IV

Count IV alleges that Respondents Roger Pemble and Wasteland, Inc. failed to provide adequate daily cover. Rule 305(A) requires at least 6 inches of suitable material to be placed on all exposed refuse at the end of the operating day. The purpose of this is to prevent the transmission of water and, when combustible materials are present, to minimize the possibility of fire. Although argued by Respondents it is not generally necessary to measure the depth of the cover: clearly, if refuse can be seen exposed through the cover, the cover is inadequate to fulfill its function.

The following summarizes evidence relating to inadequate cover:

| Date | Citation | Observations |
|---------------------|--|--|
| 10/23/80 | Compl. Ex. 14 | Most of northern half of site covered with Pielet material. |
| 11/26/80 | R. 825-830 and 936-938 | Uncovered fill face. Problems with equipment. |
| 12/1/80 and 12/2/80 | R. 669-671, 830-834, and Compl. Ex. 15 | No cover except for Pielet material. Equipment not working. Inspection early on the first, late on the second. |
| 2/26/81 | Compl. Exs. 63 and 64 | Large quantities of exposed refuse prior to opening and on Sunday. |
| 3/11/81 | R. 418 and Compl. Ex. 18 | 60 x 25 yd. area covered with Pielet material at 10:40 a.m. |
| 3/27/81 | R. 418-422, 741, Compl. Exs. 17 and 19 | Almost entire site covered with Pielet material. |
| 4/9/81 | R. 487-489 and Compl. Ex. 20 | After permitted hours, Pielet material, paper and tar paper uncovered. |
| 4/28/81 | Compl. Ex. 21 | Half of filled area covered with Pielet material. |
| 5/13/81 | Compl. Ex. 23 | Refuse exposed through clay cover on southern portion of site. Remainder covered with Pielet material. |
| 5/22/81 | Compl. Ex. 24 | Same as 5/13/81. |
| 6/2/81 | R. 426 and Compl. Ex. 25 | Refuse exposed thorough cover on 40 x 20 yd. area covered with Pielet material. Exposed refuse on northwestern edge. |
| 6/18/81 | R. 430-431 and Ex. 31 | Refuse exposed through day on northwestern portion of site (fill face southern portion). Pielet material uncovered in western area; large exposed areas. |
| 7/1/81 | R. 1289-1293, 1396-1398, Compl. Exs. 128 and 130 | Northern half clay covered. Southern half covered with Pielet material. |

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| 8/12/81 | R. 440-449 and Compl. Ex. 34 | Inadequate cover in non- working areas deposited previous day. |
| 8/24/81 | R. 453 and Compl. Ex. 35 | Refuse protruding through cover. |
| 9/1/81 | R. 456-457, 760-753 and Compl. Ex. 36 | Covering refuse from previous day. |
| 10/21/81 | R. 469 and Compl. Ex. 41 | Uncovered refuse in non- working area. |
| 11/3/81 | R. 474, 475, Compl. Ex. 42 | 1800 cubic yd. fill face. Previous day slope admitted uncovered. 35 x 15 yd. area previously deposited uncovered prior to beginning operation. Refuse observed through cover over 70 x 140 yd. area. |
| 11/24/81 | Compl. Ex. 43 | Pemble admitted unable to cover previous night. Entire east half of site showed exposed refuse. |
| 12/14, 15/81 | R. 1323-1332, Compl. Ex. 135, 136, 141 and 142 | Area uncovered at 4:30 p.m., midnight and 8:00 a.m. Inadequately covered at 2:00 p.m. |
| 2/10-12/82 | R. 922-924 | Mound 3 x 15 yds. running length of site not completely covered over 3 day period. |
| 2/17/82 | R. 1350-1354, Compl. Exs. 144, 145 and 160 | Western slope uncovered for 3 or 4 weeks. |

Respondents rebut this testimony by arguing that the cited inspection reports fail to show that Piolet Bros. material was used as cover, apparently because of the timing of the observations. The assumption required to reach that conclusion is that at some time after the inspection and before ceasing operations, the Piolet material was covered with clay. However, the reports contain admissions as to failure to cover, show that specified areas remained uncovered for longer than a day, covered large areas of the site which could not have been covered in a timely fashion and show other evidence which can only be discounted if irrational assumptions are made about the operation of the site.

Therefore, the Board finds that Respondents have violated Rules 210, 301, 302 and 305(A) and Sections 21(a) and (d) of the Act.

COUNT V

In Count V the Agency alleges that Respondents modified the operation of the landfill without a supplemental permit by including recycling and salvage operations which had been specifically excluded from Permit 1976-13-OP (see First Am. Compl. Ex. F, p.6, Compl. Exs. 29 and 123).

On November 1, 1980 Wasteland, Inc. leased a piece of property (the paper site) from Bank of Lyons Trust No. 2478 (Compl. Ex. 5, Interrog. 6 and Compl. Ex. 30) which is about one thousand feet south of the landfill. The operators of the landfill constructed a building for paper recovery on the site and collected materials at the landfill for deposit at the paper site from about February 5, 1981 through at least June 12, 1981 (see Admissions 28, 30 and 34). Neither the property nor the building were permitted (Adm. 25 and 26).

Roger Pemble testified that beginning in September or October of 1980 he had begun recycling paper and cardboard which he originally took to another company and then later took to the paper site (R. 1648-1650). When a truck came to the landfill, if it was composed mostly of paper and cardboard it would be sent directly to the paper site. If not, it would be dumped at the landfill and the cardboard would supposedly be separated and sent to the paper site (R. 1652). Wasteland would charge all trucks for delivery whether they were directed to the paper site or they dumped at the landfill, thus charging for disposal and profiting on recycling (R. 1654-1655).

On February 27, 1981 Waste Resources Corp. was formed by Roger Pemble and Ed Kanive (R. 100 and Compl. Ex. 10). Pemble became the general manager of both the landfill and the paper site, received a salary from Wasteland only and paid for the paper site building with his own funds with an agreement that Wasteland or Waste Resources would reimburse him. Waste Resources does not pay Wasteland for cardboard received, Wasteland has paid some of Waste Resource's bills, and the baler at the paper site is owned by Wasteland (R. 1490, 1505 and 1548). However, Waste Resources does have separate account records and has paid separate rent for its property (R. 1482-1484).

Regardless of the corporate interrelationship of Wasteland and Waste Resources, Wasteland has clearly altered its operation from that which was permitted. Its acceptance of paper and cardboard, whether or not directed to Waste Resources, was improper under its permit. Since no supplemental permit was obtained, Respondents have been shown to have violated Rules 210, 301 and 302 and Section 21(d) of the Act.

COUNT VI

Count VI concerns causing, threatening or allowing the discharge of contaminants into the environment so as to cause

pollution. By its terms the landfill was to be operated in accordance with the application which included a berm and ditch system surrounding the landfill (First Am. Compl. Exs. D and F).

Observations by Jeffry Stofferahn, an Agency inspector are summarized below:

| Date | Citation | Observations |
|----------------------|--|---|
| 6/2/81 | R. 425, 743-746 and Compl. Ex. 25 | Leachate pond between RR tracks and western edge of landfill. |
| 6/18/81 & 7/10/81 | R. 431-434, 752-753, Compl. Exs. 31 and 32 | Exposed refuse on western part of landfill near ponded water and leachate. Refuse in pond south of landfill. Sewage odor. |
| 7/23/81 | Compl. Ex. 33 | Some clay placed over western leachate but emerging in low spots. Refuse in southern pond and leachate entering. |
| 7/31/81 | Compl. Ex. 34 | Southern pond water draining slowly under RR tracks toward I and M canal. Leachate and refuse in northern part of pond. |
| 8/12/81 | R. 440-452, 757-759 and Compl. Ex. 34 | Southern pond still draining. |
| 9/1/81 | Compl. Ex. 37 | Refuse along pond being covered with clay but not removed. |
| 9/15/81 | Compl. Ex. 38 | Pemble admits some refuse in pond due to landfill. Stofferahn says most was. |
| 10/21/81 | Compl. Ex. 41 | Refuse still in pond with leachate. |

Leachate is defined by Rule 104(i) as "liquid containing materials removed from solid waste." Materials such as paper, cardboard and garbage will cause leachate formation (R. 1027-1028), whereas non-putrescible and non-combustible wastes will generally not cause leachate problems (R. 1080-1081). Since the landfill was not allowed to handle leachate forming wastes, its permit did not require measures to prevent such formation or to monitor for it, such as clay liners and monitoring wells (R. 1053-1054).

Clearly, Respondents have not taken steps to protect against leachate formation. The permit plans do not indicate the placement of any clay liner to contain leachate and the visible layering

of the western slope of the landfill shows that no liner exists there (Compl. Exs. 31, 35 and 42). Further, as noted above, seepage has been observed from the western and southern sides of the landfill which would not occur if an effective liner were in place.

As Cavanagh pointed out, in order to control leachate a ten foot thick liner with a permeability of 10^{-7} cm/second or less should be placed on the bottom or around the sides of the landfill (R. 1028-1030). He stated that "by having soils of sufficient low permeability and sufficient thickness you can have proper clay content, and you can mitigate the problem of leachate flow" (R. 1029-1030).

Instead of this, materials at the landfill were simply deposited without any protective barriers. Even worse, the landfill is located in an area of exposed bedrock, and the limestone barriers clearly indicate that there is little of no natural barrier to leachate transmission (see R. 409-410, 1394-1395, Compl. Exs. 13, 29 and 123).

Leachate observations were also made at the paper site:

| Date | Citation | Observations |
|----------|---------------------------------|--|
| 8/17/81 | R. 521, and Compl. Ex. 46 | Bales of paper and cardboard in or near standing water. Leachate in NW corner. |
| 8/24/81 | R. 539 and Compl. Ex. 47 | Leachate on southside of site. |
| 9/1/81 | Compl. Ex. 49 | Leachate on northern part of site. Bales in standing water. |
| 9/9/81 | R. 557-559 and Compl. Ex. 50 | Leachate at five places. Bales in standing water. |
| 9/22/81 | R. 570-573 and Compl. Ex. 53 | Slight leakage from barrels. |
| 10/7/81 | Compl. Ex. 54 | Leachate at several spots. Bales in ponded water. |
| 10/28/81 | Compl. Ex. 55 | Bales and leachate in ponded water. |
| 11/24/81 | R. 578-579 and Compl. Ex. 56 | Orangish and greenish water. |
| 12/17/81 | R. 581 and 805-806 | Greenish water. Piolet material in contact with water. |

Respondents argue that rules 313, 314(e) and 315 do not apply to either site and that no leachate problem has been proven.

If the definition of Section 3 of the Act is read literally, Respondents would be correct in their assertion that neither site is a sanitary landfill, since both have created a nuisance and nuisances are excluded from the definition of sanitary landfills. However, the alternative would be for the sites to be considered open dumps. Certainly both sites "consolidate refuse from one or more sources" and "deposit" it "into or on land" (see Section 3 of the Act, definitions of "Open Dumping," "Refuse," "Disposal" and "Site").

Despite the literal language of the cited rules, the Board has often held that the sanitary landfill rules are applicable to sites which should be operated in conformity with those rules in order to avoid pollution problems. Thus, even if a facility is unpermitted it may be held subject to those rules, and if it creates a nuisance, there is even greater reason to subject it to those requirements.

Respondents further argue that the paper site is exempt from such requirements in that no permit is required for recycling. However, even if a site is involved in recycling, if it also carries on disposal operations, a permit is necessary. As will be shown in the discussion of Count IX, disposal operations have been carried on at the paper site and the site, therefore, requires a permit.

Finally, Respondents argue that the Agency "clearly failed to establish any leachate problem." This argument is apparently premised upon the failure to establish any environmental harm or that the substances described as leachate in the evidence were in fact leachate. They point to the testimony of Michael Rapps that leachate cannot always be determined by visual observation and that its presence will not necessarily cause environmental harm (R. 1603).

This argument overlooks the fact that the alleged violations can be proven by operations which threaten to cause environmental harm. Regardless of whether leachate has actually been generated and discharged to the waters of the State, the types of refuse accepted (see Counts II and IX discussions), the placement of that refuse and the failure to take sufficient steps to confine any leachate clearly establish that such harm is threatened.

The Board, therefore, finds that the allegations of Count VI have been proven.

COUNT VII

Count VII charges all Respondents with causing or allowing scavenging at both sites. According to Pemble the usual practice

was for trucks to dump their loads at the fill face and for the marketable cardboard to be separated out, loaded onto roll-off boxes and taken to the paper recovery site and eventually resold (R. 122, 1648-9, 1651-3, 1729).

Any salvaging operation conducted at the fill face violates Rule 307(b) which requires use of an area remote from the fill face for the receipt, separation, storage and removal of salvageable materials. Instead they conducted their salvage operation at the fill face (R. 25-6).

The salvaging operations at the landfill site interfered with the operations of spreading, compacting and covering refuse which was delayed until salvaging was completed. Pemble testified that covering would be delayed until after the salvaging was completed (R. 53). Evidence was presented showing that the conditions on the landfill site were often unsanitary because of scattered litter and refuse that was left uncovered even over the weekend. (Compl. Exs. 64, 67, 73, 143-5, 154-5, and 160). There was similar evidence showing that conditions on the paper site were also unsanitary because the paper was dumped onto the ground and left exposed (Compl. Exs. 105 and 146-7).

Paper litter from the Respondents' operation was observed along the highway and on neighboring property on several occasions (R. 46-49, 53-56, 73, 1159 and 1337). Vollmer testified that the Will County Health Department received complaints of rats at the landfill. He followed up the complaint and observed one or two rats at the landfill site on two occasions (R. 912). On one of those occasions he observed what appeared to be a rat burrow (R. 962 and 970). Vollmer observed a large number of black birds at the landfill on February 10, 11, 12, 1982 which were the same days on which he observed the large uncovered mounds of refuse (R. 924) and rats were observed crossing the road from the Respondents operation by Dominic Santarelli who lives across the street from the landfill. He also testified about the problems the rats caused him (R. 56-60). Elliott testified he had to buy more rat poison in the last year than in the last 20 years together (R. 1157 and 1209).

Respondents again contend that the alleged violations are inapplicable to these sites in that they are not sanitary landfills. For the same reasons as discussed in Count VII, the Board rejects this argument.

Second, Respondents contend that the salvaging operation did not delay daily cover because cover was always placed at the end of the operating day. However, the Board has found in Count IV that that is not in fact true.

Third, Respondents contend that paper litter cannot be unsanitary, but that is also incorrect. When paper blows off the site and across a highway and when it is stacked in bales for long periods of time with gaps between bales to allow for harborage of rats, it becomes a nuisance.

Therefore, the Board finds that the allegations of this count have also been proven.

COUNT VIII

Count VIII charges Roger Pemble, Wasteland, Inc. and Vernon Lamoreaux with failure to provide adequate roads and dust control measures at the landfill in violation of the Standard Requirements set out in Rule 314(b) and (f). The muddy and dusty condition of the Lockport Road (Route 171) and its effect on people who travel by the landfill and who live nearby and the inadequacy of the street sweeping has been established by the testimony of several people. The Wasteland mobile-trailer office located just south of the landfill gate, and the condition of Lockport Road (Route 171) on three different days can be seen in Complainant's Exhibits 68, 69 and 71 (R. 1146-51 and 1207). These photos were taken by Ray Elliott, who lives about 400 to 600 feet northeast of the landfill gate (R. 1121, 1167).

Nathaniel Chandler, who lives about two blocks north of the landfill, testified that mud tracked out of the landfill onto the highway created dusty conditions which interfered with visibility, made more frequent car washing necessary, and was particularly dangerous in freezing temperatures. A sweeping machine used by the landfill did not take care of the problem (R. 37-41: Vol. I). Mazree Williams testified that driving through the mud made her car slide and rewashings necessary (R. 46-7: Vol. I). Cornelius Craig frequently drove by the landfill and observed the sweepers on the highway but thought the sweeping caused a danger of collisions on the busy highway (R. 70-73: Vol. I).

Gordon McClusky, the City Administrator of the City of Lockport, testified that mud dumped on the east side of Lockport Road in the northbound lanes by trucks leaving the landfill is traveled into the corporate limits of Lockport a distance of six to eight blocks (R. 63: Vol. I). When the mud is wet it is slick and a hazard to traffic. The city is concerned that the catch-basins and/or sewer inlets will be clogged due to the quantity of mud left by the trucks (R. 64: Vol. I). The homes outside the corporate limits, closer to the entrance of the landfill, are particularly affected by dust and there are dust clouds on the highway (R. 65: Vol. I).

Ed Urbanek, an Illinois Department of Transportation highway maintenance technician, testified that in October 1981, eleven curb inlets along Route 171 near the landfill were clogged. The clogged inlets and debris around the grates caused flooding in the area and on several occasions the Department was called to clean up debris and accumulations of dirt along the shoulder of the road and gutter (R. 75-79: Vol. I).

Trooper Robert Rogers, of the Illinois State Police testified that he had observed the highway conditions near the landfill entrance many times and has observed mud and rock in the roadway

mainly in front of the entrance and to the north in the north-bound lanes and has observed drivers taking evasive actions to avoid the mud on the highway (R. 1221 and 1223). The trooper himself at times had to take evasive action and at times had to recover from a fishtail effect when conditions were rainy (R. 1245-6).

Ray Elliott, who lives about 400 to 600 feet northeast of the landfill gate, frequently has observed the road conditions in front of the landfill gate and north of the gate and has observed mud, rocks and debris on the highway, the need to avoid street cleaning equipment which blocked traffic lanes and the need to drive through mud at his driveway entrance (R. 1124, 1190, and 1215). He testified that he sometimes observed mud as high as six to eight inches on the highway near the entrance to the landfill and that a high percentage of the trucks exiting from the landfill head north (R. 1126). He stated that the road was in bad condition because of the mud between one-third to one-half of the time (R. 1130).

Elliott was also bothered by the dust that resulted from the dried up mud on the highway. He had to close his windows and use his air conditioner (R. 1131). Last summer he had to use his air conditioner 30 or 40 times while in previous summers he used the air conditioner only seven to ten times (R. 1132). The dust also made keeping the house clean difficult (R. 1132 and 1196-7). More rocks and mud have to be picked up before he could mow the grass in his yard since the landfill opened (R. 1134 and 1199).

Glasgow testified that even the road inside the landfill was usually muddy if it was rainy weather and dusty if dry (R. 1307). On May 1, 1981, he observed that the landfill was so muddy that it took two tractors to help a truck stuck in the mud get up the hill to the gate (R. 1306).

Pemble testified that if a truck ran off of the landfill road it would pick up mud in the dual wheels and that the road also gets muddy (R. 113).

Respondents contend that the testimony only proves that the citizens of the area have made the landfill a scapegoat for their problems and that the evidence fails to prove that the condition of the on site roads at the landfill caused them. They cite Pemble's testimony that a sweeping machine was used daily to clean up any mud on the highway and that 2300 cubic yards of stone and gravel were purchased for use on the interior roads (R. 1205, 1657-1662, Resps. Ex. 4, 5 and 6).

However, the testimony clearly establishes that mud often covered the highway, was mostly near and to the north of the landfill entrance (which is the direction that most trucks headed from the landfill), that the street sweeper was ineffective, and that the road was not muddy prior to Wasteland's commencement of operation (R. 1125 and 1180).

The Board, therefore, finds that the allegations of Count VIII have been proven.

COUNT IX

In Count IX the Agency alleges that Respondents have caused or allowed open dumping, have conducted an unpermitted refuse disposal operation and have disposed of waste at an unpermitted site. Respondents contend that the paper site is simply a recycling operation and that no permit was needed.

From before February 5, 1981 and continuing at least up to June 12, 1981 the operators of the landfill caused or allowed the consolidation of waste from one or more sources at the paper site; that is, cardboard was received for recycling (Admission 34). Also Waste Resources Corporation, since its incorporation on February 27, 1981 has been an operator of the paper site (R. 266 and Compl. Ex. 10).

The operation at the paper site during from about October 1980 to about February 1981 consisted primarily of dumping paper and cardboard on the paper site (R. 260-262, 1648-1650 and Compl. Ex. 30). The on site building was completed in February 1981 to house a paper baler which Wasteland had bought in October 1980 and had been using at a third site on Route 53 (R. 260-262, 1474-1477, 1490 and Compl. Ex. 5, Interrogs. 30 and 34).

After that, according to Pemble, a baling operation was conducted utilizing paper and cardboard brought to the site. About 50% of an incoming load was "good" material which was sorted out and baled. Depending on the market for cardboard the good material would be sold or stockpiled (R. 1710). The material that was left such as coated paper, cellophane and plastics was "buried right on site at the recycling center" except for about 40 or 50 loads which were sent to the C and A Landfill (R. 1710-11). Pemble testified that the material that could not be sold covered three or four acres seven to ten feet thick on the paper site (R. 268 and 302-303).

Stofferahn observed Piolet refuse spread over baled and loose paper and cardboard with mixed in plastic located both north and east of the on site building on August 17, 1981 (R. 518-521 and Compl. Ex. 46); August 24, 1981 (R. 528-533 and Compl. Ex. 47); August 25, 1981 (R. 549-550 and Compl. Ex. 48); September 1, 1981 (R. 551-553 and Compl. Ex. 49); September 9, 1981 (R. 559-561 and Compl. Ex. 50); October 7, 1981 (R. 573-576 and Compl. Ex. 54); November 24, 1981 (R. 578-580 and Compl. Ex. 56); and December 17, 1981 (Compl. Ex. 58). Although some paper and cardboard which had been stacked south of the on site building was removed and taken to C & A Landfill, the piles of refuse on the north side of the building were never removed (R. 1008-1013 and Compl. Ex. 55). These piles which are located directly north of the on site building and designated "C" and "D" on the site diagram amounted to 5700 cubic yards of refuse in August 1981 (Compl. Ex. 46). Since then Stofferahn observed the addition of more paper and cardboard to those areas north of the building (R. 1010 and 1012).

Leachate and paper and cardboard in standing water have been observed and photographed (See Count VI, above). High piles of mixed together paper, cardboard, plastics and Piolet refuse have been observed and photographed (Compl. Ex. 92-96 and 98). On January 31, 1981, the on site building burned down. Vollmer observed a truck unloading paper even after the baler and the baler building had burned down (R. 898-903, Compl. Exs. 100 and 102). Compl. Ex. 105 shows the bluff on the east side of the site. The area north of the former on site building was covered with baled and unbaled cardboard, plastic, paper and shredded paper (R. 904 and Compl. Exs. 104-105).

Pemble admitted that for all practical purposes the baler was useless (R. 1731-34), but Respondents continued to accumulate more and more paper and cardboard on the site after the fire (R. 134-5). On October 29, 1981 Glasgow photographed the paper site (R. 1417-19 and Compl. Exs. 134-5). On subsequent visits he did not see any indication that the bales north of the on site building had been removed (R. 1317-19). In fact he observed shredded paper bales located in the same places on subsequent visits (R. 1317-18). The amount of paper on site at the time of the hearing can be seen from the aerial photographs taken by McCluskey on February 15, 1982 (R. 1274 and Compl. Exs. 146-147).

Based on these facts, the Board finds that refuse was disposed of on the paper site and that open dumping occurred there since no permit was ever obtained for the site. While Respondents argue that no permit is needed for a recycling operation, the facts show that both recycling and disposal took place.

The Agency anticipated an argument which was not argued by Respondents, that being that Section 21(d) might exempt the paper site from the permit requirement in that it exempts on site disposal of materials which are generated by the activities on the site. However, that exemption is inapplicable under the facts of this case in that Respondents' activities which might invoke the exemption consist solely of segregation of materials into those which are saleable and those which are not. The wastes, therefore, are not "generated" on the site, but rather are accepted by and disposed of at the site.

The Board finds that the allegations of Count IX have been proven.

COUNT XI

In Count XI the Agency alleges that Respondents caused or threatened or allowed open burning and caused or threatened or allowed the discharge of contaminants into the environment so as to cause air pollution. Respondents admit in Admission No. 37 that a fire was started on February 5, 1981 by a malfunctioning tractor that sparked and ignited cardboard (see also Compl. Ex. 5, Interrog. No. 39). Respondents also presented no evidence to rebut testimony demonstrating that a second fire occurred on December 31, 1981. They contend, however, that Waste Resources is solely responsible.

Pemble testified that the malfunctioning Caterpillar was working or traveling over or near paper and cardboard that was in such a condition that it ignited from just a spark thrown from the tractor and quickly spread out of control (R. 277-283 and 304).

Stofferahn observed a fire at the paper site on February 5, 1982. Mainly paper and cardboard were burned but he also observed some barrels in the center of the burning area. The smoke was visible on the highway as he drove to the site. The fire lasted at least three or four hours (R. 475-483 and Compl. Ex. 44), and was observed and photographed by Mike Vollmer (R. 868-876, and Compl. Ex. 80 and 81).

Ray Elliot also took a photograph of the effects of the fire on the neighborhood of the paper site showing smoky conditions caused by the fire, paper ash that floated into the yards of homes on Route 171 and the fire itself (Compl. Ex. 60 and 61).

On December 31, 1981, just a few days before the hearing began, there was another major fire in which the on site building and bales were burned up as well as some surrounding paper and cardboard (R. 256-258, 894-905, and Compl. Ex. 100-105). The fire also caused smoky conditions on the highway (R. 1218-19).

The conditions at the paper site as previously discussed under Counts VI, VIII and IX are clearly such that fires should not be unexpected and that once a fire started, it would quickly spread. Further, to place the responsibility upon Waste Resources, which had not yet been incorporated, is unfounded. As discussed earlier, Lamoreaux stood in such a relationship to the property that he should have exerted some control, Pemble was managing the site and Wasteland controlled the site at the time of the first fire and thereafter was so intertwined with Waste Resources that it should have exerted control to avoid such conditions.

The Agency has pointed out that the recent Third District Appellate Court case of People v. Joliet Railway Company, et al., No. 81-352 (July 8, 1982) may impact the open burning allegation. That case cites McIntyre v. PCB (1972), 8 Ill. App. 3d 1026 for the proposition that "the intent to institute open burning for the purpose of disposing of refuse must be shown before any statutory violation can be proved."

However, the Board does not find that case to be controlling here where non-permitted, combustible materials were present in large quantities and so placed as to be exposed to possible sparks from the equipment working there. While there is no proof that the fires were intentionally set, Respondents' gross negligence in allowing a situation to develop where the potential for fire was so great that it overcomes the necessity of showing intent.

However, since up to \$15,000 of possible marketable materials were lost and the baler was burned, Respondents have been sufficiently penalized and no further penalty is necessary to aid in

the enforcement of the Act in this regard.

Therefore, the Board finds that the allegations of Count XI have been proven.

PENALTY

In determining whether a penalty should be assessed, and if so, how much that penalty should be, the Board has considered the factors of Section 33(c) of the Act.

The people who live in the neighborhood of the landfill have been exposed to the health dangers and annoyance associated with rats; their lawns have been littered with papers blowing from the landfill; they have been subjected to blowing ashes and smoke from the paper recovery site during the fires, and have been subjected to dust which interefered with their use and enjoyment of their homes and yards. Motorists who use Route 171 have been subjected to driving hazards from mud tracked out of the landfill and have had to take evasive driving actions.

The potential for future injury or interference also exists. Fires, both above and underground, can occur as a result of the storage and landfilling of combustibile and putrescible materials and are difficult to put out. Combustibile refuse has been observed spread over wide areas of the landfill.

Gas formation and migration is also a potential danger. Refuse can decompose and form carbon dioxide and methane gas which can migrate and, under certain conditions, could explode. Odor is also sometimes produced by such a landfill (R. 1032-34).

Leachate production and migration is also a potential danger to ground and surface water. Leachate has already been observed at the site and certainly will be produced in the future by the decomposition and percolation of water through the refuse unless action is taken to avoid it. To date, few such precautions have been taken. Considering the wastes which were buried on the sites, a hydrogeological survey should have been performed, clay liners should have been put in place, cover should have been applied in a timely and conscientious fashion and should certainly have been non-combustibile and more impermeable than Pielet material. Also, proper steps should have been taken to monitor the safety of the site.

The landfill and paper site could have had economic and social value if properly managed. Instead they have become a detriment to the neighbors, the City of Lockport, the Department of Transportation and the Park Board, and were economically valuable only to the owners and operators.

Pemble told Cavanagh they did not want to pay to do the site evaluation and development work necessary to legally receive paper and cardboard, but they took in and disposed of those items anyway. This puts other landfills who do obey the law at a disadvantage

because they have to pay for the study, design work and installation of preventive measures and monitoring.

The Illinois State Geological Survey report and the Agency denial of the permit application show that it was not an appropriate site for a landfill which disposes of putrescible, combustible and flammable general refuse. The site was appropriate for the purpose for which it was permitted and may have been appropriate for recycling, but was inappropriate as operated.

At the paper site it would have been technologically practicable and economically reasonable for Respondents to have removed the material which was not marketable and disposed of it in a permitted landfill. They did this with some of the material which was located south of the on site building in October, 1981.

Stacking bales up off the ground and out of the water, covering them with plastic, and policing the litter in the area, rather than piling up loose and baled papers on the ground exposed to the wind and weather would not have been unreasonably difficult or expensive, nor would obtaining a permit.

At the landfill Respondents should have turned away non-permitted materials at the gate or obtained the necessary supplemental permits.

It also would not have been unreasonable for the Respondents to have operated the landfill in accord with the operating requirements of the Pollution Control Board and the permit. Other landfills do it. The problem of mud on the road could have been reduced with a better on site road layout, cover material, and operating procedures. In the application for permit submitted for the paper site another entrance with a much longer road was proposed. The lengthening of the approach to the landfill itself combined with a good surface and maintenance also could have reduced the problem.

The operation of the landfill and paper sites has been in blatant disregard of Board Rules, the Act and environmental safety. The evidence indicates that most of the refuse collected at the landfill was unpermitted. Most of it was putrescible and combustible and yet few of the necessary precautions for disposal of such material were taken. The same is true of materials disposed of at the paper site, except that none of those materials were permitted.

These sites continued to be operated improperly even after repeated notifications of improprieties were given by State and local officials. On numerous occasions Pemble was informed of violations at the sites. He generally responded that he would remedy the problems, but action toward such remedies was either slow or non-existent. After repeatedly being warned of acceptance of unpermitted wastes, he filed an application for a supplemental permit while he continued accepting such waste. After

the supplemental permit was denied, he still continued to accept it.

His attitude, as expressed to Glasgow, was that "he couldn't make a profit if ... [he] just accept[ed] the permitted material" (R. 1301). When he finally agreed to stop accepting Piolet material (which he knew to be unpermitted) at the landfill, large volumes of it coincidentally began appearing at the paper site (R. 1300-1303).

This attitude of doing whatever has to be done to make the biggest personal economic gain is at the heart of environmental regulations. For years pollution problems were left off the ledgers of business, industry and some governmental entities only to appear as a societal liability.

Fortunately for society, regulations have been written to place the costs of environmental protection upon those who might otherwise pollute. A permitting system has been devised to insure that a given landfill site is appropriate for the wastes it will receive. The greater the potential harm of those wastes, the greater must be the protections built into the landfill, and as a result, the greater the costs of handling those wastes. That is as it should be.

That, however, is not how these sites were operated. A site which was determined to be suitable for a particular purpose was used for another. If nothing could be done to remedy that problem an environmental hazard would continue for untold years causing untold harm. Due to Respondents' avoidance of the permitting system the State has been left unaware of exactly how much of what sort of materials are buried on the sites, how much leachate has been, or can be expected to be, produced or where it will go once it is produced. If proper permitting procedures were followed all of these facets of the sites would at least have been fully considered.

But there is a remedy. The State has set up the Agency to enforce against violators of the Act, and the Board to determine what should be done. In this case, the Board has determined that the operating permit for the site should be revoked, that remedial measures should be ordered, that a bond or other like security should be taken, and that a substantial penalty should be levied to insure that the owners and operators of the site do not profit from their wrong-doing.

The Agency has gone to great lengths to establish cost savings to Wasteland and Waste Resources and argues that any penalty imposed by the Board should be greater than those cost savings. This, the Agency argues, is necessary to assure a disincentive to those covered by the Act to violate environmental standards.

Such an argument has great, though somewhat simplistic, appeal: if a given action is to be discouraged, make sure that the cost is greater than the savings. The problem, of course, becomes how to determine the cost and the savings. The cost is not simply the penalty, but must also include the expense of remedial measures, and in some cases a penalty may be appropriate even though no savings have been realized. On the other hand, if savings are realized through inadvertence, a large penalty may do little or nothing to aid in the enforcement of the Act.

The Board declines the Agency's invitation to explicitly declare its policy in this regard, for effective penalties are not subject to definable formulas. They should, rather, be based upon the facts as a whole. The Agency asks the Board to "explicitly declare that it can, and in appropriate cases, will impose fines to remove the economic incentive to disregard the Act." Certainly, the Board may do so in appropriate cases: i.e. where such an action will aid in the enforcement of the Act. In many cases the Board attempts to do so. However, economic incentive is not the sole motivation for behavior and is not always readily determined.

On the other hand, evidence concerning savings, profits, costs and other economic measures are clearly relevant, and are often a major factor in determining a penalty.

In this case the Agency has determined savings of a minimum of \$17,000 to \$25,500 by burying unpermitted paper and cardboard and other refuse in the landfill, \$6,555 at the paper site (covered by Piolet material) and another \$38,900 in materials "disposed of" at the paper site. Thus, total savings are a minimum of \$62,445 to \$70,955 (Agency Br. 100-103). The figures are, however, very rough. While they are stated as a minimum, they appear to be more related to the costs of removal (since cover material is not subtracted) than savings. On the other hand, they do not include the total operating period and could be much too low.

Other factors that the Board has taken into consideration are the continuance of the improper conduct, the lack of responsiveness of Pemble, the assets of Wasteland and Waste Resources, and the potential for environmental harm. Remedial actions were taken belatedly, if at all, despite Pemble's continued assurances that such steps would be taken. At hearing Pemble's testimony was effectively impeached and the hearing officer noted his "somewhat expansive answers" showing "a need to justify". Further, there is testimony that \$100,000 to \$150,000 worth of marketable paper and cardboard are on the paper site.

Based upon these considerations, the Board will impose a penalty of \$75,000 against Wasteland, Waste Resources and Roger Pemble, who are found to be jointly and severally liable.

The same considerations do not apply to Vernon Lamoreaux,

however. He did not actively participate in the violations, rather his error lies in inaction. He also has not shared in the savings or the profits of the operations. His only profits are rent from the land. In aggravation, however, the Board notes that this is the second time that landfill problems have arisen on the landfill site under his ownership (R. 1091-1093). The Board will, therefore, impose a fine of \$2,000 against him.

OTHER REMEDIAL ACTIONS

The need for a performance bond or other security is clear. Respondents have demonstrated an inability to conform their conduct to legal requirements. The Agency has recommended a bond of \$38,900 for the paper recovery site and \$50,000 for the landfill, although the reasoning for that particular amount is obscure, and is apparently based upon some remedies which the Board will not order. What the Board will order is that the site be closed and covered, that a hydrogeologic survey be completed and that monitoring wells be installed.

Since there is, apparently, \$100,000 to \$150,000 in available assets from marketable paper, and since the penalty has been set at \$70,000, up to \$80,000 should be available for bond or security from that asset alone. The Agency's \$50,000 estimate is reasonable for closure of the sites, but the survey and placement of monitoring wells may well require another \$50,000. Therefore, a performance bond or other satisfactory security in the amount of \$100,000 will be ordered.

Revocation of the current permit also appears necessary. Respondents have not conformed their conduct to its requirements and appear unwilling to do so. Of course, a new permit will be required to make the ordered modifications to the site.

The Board will not order that the material presently buried on site be exhumed or that the site be retrofitted in that the record does not establish sufficiently severe, imminent environmental hazards. While operations of the site have been highly improper, the wastes buried there have not been proven highly hazardous.

However, that possibility still exists and more information is necessary before final actions are taken concerning the site. Completion of a hydrogeologic survey and installation of monitoring wells in a manner acceptable to the Agency should provide that information. The Board will therefore retain jurisdiction until the lack of environmental harm is demonstrated or the Board orders final action.

This Opinion constitutes the finding of facts and conclusions of law of the Board in this matter.

ORDER

1. Respondents have violated Rules 201, 301, 302, 305(a), 307, 308, 313, 314(b), (e), (f) and (g) and 315 of Chapter 7: Solid Waste; Rule 502(a) of Chapter 2: Air Pollution; and Sections 9(a) and (c) and 21(a), (d), and (e) of the Environmental Protection Act;

2. Respondents shall cease and desist from violations of these rules and sections of the Act, and shall cease and desist accepting any refuse at the Wasteland, Inc. landfill or the Waste Resources paper recovery site;

3. Respondents Wasteland, Inc., Waste Resources and Roger Pemble shall, within 90 days of the date of this Order pay a penalty of \$75,000 for which they shall be jointly and severally liable;

4. Respondent Vernon Lamoreaux shall pay a penalty of \$2,000 within 45 days of the date of this Order;

5. The penalties imposed by (3) and (4) above, shall be paid by certified check or money order payable to the State of Illinois and sent to:

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY
Fiscal Services Division
2200 Churchill Road
Springfield, IL 62706

6. Respondents, Wasteland, Inc., Waste Resources and Roger Pemble, shall obtain a performance bond or other acceptable security within 45 days of the date of this Order in the amount of \$100,000 to insure compliance with this Order;

7. Operating Permit No. 1976-13-OP is hereby revoked except that Respondents shall remain subject to and shall comply with those provisions pertaining to closure of the site;

8. Respondent shall apply, within 90 days of the date of this Order, for a supplemental development permit from the Agency for the permanent disposal at the landfill site of putrescible, combustible, and flammable general refuse and shall obtain such permit within 180 days of the date of this Order and complete the necessary remedial measures to the site specified in the permit and this Order within one year from the date of this Order, including but not limited to:

a) installation of an adequate system of leachate monitoring wells and monitoring program;

b) installation of adequate gas vents and flares and an adequate monitoring system; and

c) appropriate steps to isolate and contain combustible refuse so as to prevent the spread of fires.

9. Within 30 days of the date of this Order Respondents, Wasteland, Inc., Waste Resources and Roger Pemble, shall have applied two feet of compacted clay cover to the landfill; and

10. Within 90 days of the date of this Order, Respondents, Wasteland, Inc., Waste Resources and Roger Pemble, shall have:

a) completed a hydrogeological survey of the site performed by a registered engineer, engineering firm, or other qualified professional;

b) shall have filed a copy of the study with the Agency;

c) the study shall be conducted in substantial conformance with the Agency Instructions and Application for Permit Form;

d) the study shall be conducted in accord with applicable Rules and Regulations and laws; and

11. The Board shall retain jurisdiction in this matter.

IT IS SO ORDERED.

Board Member I. Goodman concurred.

Board Member N. Werner abstained.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 26th day of August, 1982 by a vote of 4-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board