

ILLINOIS POLLUTION CONTROL BOARD
May 2, 1985

VILLAGE OF ADDISON,)
)
 Complainant,)
)
 v.) PCB 84-161
)
 L & S INDUSTRIES, INC.,)
)
 Respondent.)

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

Hearing was held on this complaint March 28, 1985, exhibits from which were filed April 2, and the transcript of which was filed April 22. The Village's Exhibit 3 is a peanut butter jar containing slightly over one and one-third cups of "rainwater collected that [was] standing behind" the property of witness Barbara Maziary, who collected the water the morning of March 28, 1985 (R. 69). When offering this exhibit into evidence, the Village's attorney noted that "[w]e have no chemical analysis of what this is, but we will submit it if the Board wishes to perform an analysis on it for whatever value it is . . ." (R. 70). No objection was made to the admission of the exhibit.

The Board Members have examined this exhibit, with the exception of Mr. Nega who is ill. The water is murky, dark solids having settled to the bottom of the jar to a depth ranging from 1/4 inch to 1/2 inch, while patches of grayish scum float on top of the water. Grayish scum with some darker gray spots adheres to the sides of the jar in the head space above the water, the darker spots of scum also appearing beneath the surface of the water. When the lid is removed from the jar, it exudes in part a solvent odor.

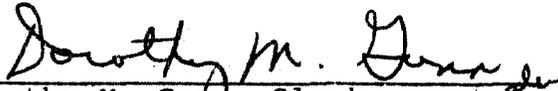
This exhibit presents filing and safety problems to the Board, particularly to the extent that any sample from such a source as standing rainwater may contain bacteria. The Board also notes that transmission of this exhibit in an intact state to any court requested to review this exhibit would be difficult, and suspects that clerks in any such courts might also share the Board's safety concerns. Therefore, the Board declines to retain this exhibit for any length of time, or to order a laboratory analysis of its contents. It is not the role of the Board to conduct chemical analyses of exhibits, such decisions being the prerogative of the party sponsoring them in consideration of the evidence needed to support its case.

If the Village is content to abide with the results of the Board Members' observations of the water sample as earlier outlined in this Order, the Board requests authorization to

dispose of the exhibit. If not, the Village will be granted leave to withdraw the exhibit for analysis. The Board notes that entry of results of any such analysis into the record would not be automatic, but would be subject to a ruling by the Hearing Officer after his consideration of any evidentiary objections respondent chooses to make. The Village is directed to file either a disposal authorization or a motion to withdraw for analysis on or before May 13. Any objections respondent may have to the procedure outlined in this Order for the handling of this exhibit should also be filed on or before May 13.

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 21 day of May, 1985 by a vote of 5-0.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board