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STATE OF INDIANA)
) SS:
COUNTY OF MARION)

BEFORE THE ENVIRONMENTAL MANAGEMENT BOARD OF THE STATE OF INDIANA

IN THE MATTER OF GARY DEVELOPMENT, INC., Petitioner,	)	
v.	)	CAUSE NO. N-53
THE ENVIRONMENTAL MANAGEMENT BOARD OF THE STATE OF INDIANA, Respondent.	)	

SETTLEMENT AGREEMENT AND RECOMMENDED AGREED ORDER

Comes now Petitioner, Gary Development, Inc., by counsel and by Larry Hagen, Vice President and General Manager; and comes now Respondent, the Indiana Environmental Management Board ("EMB"), by Linley Pearson, Attorney General, by Mathew Scherschel, Deputy Attorney General. The parties show the Hearing Officer that they have resolved their differences and ask the Hearing Officer to recommend an order to EMB in accordance with the terms and conditions set forth in Part II below.

I. HISTORY AND BACKGROUND

In early 1973, Petitioner began to explore developing a sanitary landfill in a mined-out, water-filled, sand pit in Gary, Indiana (hereafter called the "site"). On May 15, 1973, The Indiana Stream Pollution Control Board ("SPCB") approved Petitioner's proposal to dewater the sand pit. On June 19, 1973, SPCB granted Petitioner Construction Permit SW133, thereby allowing preparatory construction work for a sanitary landfill to begin.

On August 29, 1974, the State conducted its final inspection of the site which led to SPCB's granting final approval to Petitioner to commence sanitary landfill operations. The landfill began accepting solid waste for disposal in September, 1974. On February 20, 1975, SPCB sent Petitioner its Operating Permit, No. 45-2.

On May 20, 1980, SPCB approved an Agreed Order negotiated between Petitioner and SPCB staff. This Order required that Petitioner submit within 180 days of May 20, 1980, an application for a modification of its original construction permit. This application was timely submitted to SPCB on November 14, 1980.

On February 16, 1982, the Indiana Environmental Management Board ("EMB": in the interim, EMB replaced SPCB as the Indiana agency responsible for landfill permits) notified Petitioner by two nearly identical letters (hereafter called the "February 16, 1982 letter"), indicating that its Operating Permit No. 45-2 had been renewed and that its revised construction plans submitted November 14, 1980, had been approved, both subject to nine conditions. Petitioner thereafter filed a petition for hearing, contesting the imposition of these nine conditions.

Since that time the parties have negotiated the agreement set forth in Part II below, resolving the issues in dispute. The parties request that the Hearing Officer recommended that EMB enter the provisions of Part II below as an Agreed Order in Cause No. N-53.

II. RECOMMENDED AGREED ORDER

It is expressly agreed and understood that the provisions of this Recommended Agreed Order constitute a modification of Petitioner's modified Construction Permit No. SW133 and Operating Permit No. 45-2. To the extent that this Recommended Agreed Order is inconsistent with these two permits; the drawings and narrative submitted on November 14, 1980; or the State's February 16, 1982 letter, the provisions below shall supercede such inconsistent provisions, and shall govern construction and operations at the site from the date this Recommended Agreed Order is approved by EMB. (This date is hereafter called "the effective date of this Order.")

1. Condition No. 1 in the February 16, 1982 letter, to wit: Sandy, granular material under the unified soil classification SW and SP will not be used for daily cover at the site, remains unchanged.

2. Condition No. 4 in the February 16, 1982 letter is deleted and replaced by the following:

> Petitioner shall notify a staff member of the Indiana Division of Land Pollution Control (hereafter called "staff") by phone at least seven days in advance of the installation of any required leachate collection system on-site, to allow staff to inspect such installation.
>
> a. After such notification, Petitioner may install the system on the appointed day at the appointed hour, or as soon thereafter as weather permits, whether or not staff is present.
>
> b. If staff is not present for such installation, Petitioner shall document with photographs and narrative that the installation complies with Petitioner's amended construction permit.

c. Any required leachate collection system shall be installed in compliance with the amended construction permit.

3. Condition No. 5 in the February 16, 1982 letter regarding the discharge of water from the site into the Grand Calument River or other waters of the State of Indiana is deleted in its entirety.

4. Condition No. 6 in the February 16, 1982 letter is deleted and replaced by the following:

> It is not necessary that Petitioner install the seepage collection pond detailed on page seven of Petitioner's Engineering Plan. Petitioner agrees that no solid waste will be deposited in "standing water;" the phrase "standing water" shall not be construed to mean de minimus amounts of water or small rain-filled puddles.

5. Condition No. 7 in the February 16, 1982 letter is deleted and replaced by the following:

> The Clay Perimeter Seal along the southside of the site shall be constructed to an elevation of 589.7 MSL and shall be at least 10 feet wide. The parties expressly agree that the portion of Petitioner's landfill located at the southeastern portion of the site which is completed and at final grade as of December 14, 1982, will not be affected by this requirement.

6. Condition No. 8 in the February 16, 1982 letter is deleted and replaced by the following:

> The four on-site monitoring wells will be sampled on a quarterly basis. The sampling months are January, April, July, and October, with samples to be taken at the end of each month and analyzed.
>
> a. Results of these tests shall be submitted to staff by the end of the following month. The parameters to be tested are chloride,

chemical oxygen demand, total hardness, total iron, and total dissolved solids.

b. Petitioner agrees to locate and reactivate or replace the one monitoring well shown in its construction plans to be located along the eastern boundry of the site, if it is physically possible to do so.

7. The modified construction plans approved February 16, 1982, called for compaction of the clay perimeter wall around the site and testing the clay used for constructing this wall in accordance with the 90% Standard Proctor Density Test. Petitioner has found it technically and economically impractical to utilize this test. Respondent has agreed to substitute for this test any test acceptable to staff which will accurately portray the permeability of the clay perimeter wall. Accordingly, Conditions two and three of the February 16, 1982, letter are deleted and replaced with the following:

a. Within 45 days of the effective date of this Order, or if weather conditions prevent taking the borings within this time period, as soon thereafter as weather permits, Petitioner will have four soil borings (which may be drilled at an angle) taken from the site's west wall, at random locations along the wall, with split spoon samples taken at five foot depth intervals in each boring. Blowcounts will be recorded for each split spoon sample taken. The soil boring team will visually inspect the split spoon samples taken from each hole drilled and keep a log of their observations to include any identifiable irregularities or voids encountered during drilling. A total of five Shelby tube samples shall be taken from the borings. The Shelby tube samples will be subjected to a hydraulic conductivity test to ascertain the samples' permeability. Test results will be forwarded to staff within 15 days of their receipt by Petitioner. Staff shall be notified at least seven days in advance of any such boring, and will be given an opportunity to attend and view the drilling. Staff shall not interfere with such operations.

b. If the test results show the permeability of the clay wall to be 5.0×10^{-6} centimeters per second or less (i.e. $4.\overline{9} \times 10^{-6}$, 4.0×10^{-6}, 3.0×10^{-6}, 2.0×10^{-6}, 1.0×10^{-6}, 1.0×10^{-7}, 1.0×10^{-8}, etc.), then no remedial action for the west clay

perimeter wall will be required unless Staff identifies a significant infiltration of liquid as discussed in subparagraph 7c.

c. If the test results show that the permeability of the west perimeter wall is 5.1×10^{-6} centimeters per second or greater (i.e. 5.1×10^{-6}, 6.0×10^{-6}, 7.0×10^{-6}, 8.0×10^{-6}, 9.0×10^{-6}, 1.0×10^{-5}, 1.0×10^{-4}, etc.); or if Staff identifies a significant infiltration problem involving a concentrated flow of liquid into the site through the west wall or emanating from an area of deposited solid waste along that wall, then it is agreed that further negotiations between the parties will be required to determine what remedial action, if any, must be undertaken along the west wall. If the parties are unable to reach an agreement as to such remedial measures, if any, within 60 days of (i) the submission of the test results to the State, or (ii) the date a significant infiltration of liquid, Staff notifies Petitioner in writing of a finding of the issue of what remedial action may be required shall be submitted to the Hearing Officer for hearing and decision.

d. Until the soil boring tests are completed with satisfactory results in accordance with subparagraphs "a" and "b" above; or until an agreement is approved, or order entered pursuant to subparagraph "c" above, Petitioner agrees not to construct any further portions of the clay perimeter wall around the site.

i. If said test results are satisfactory in accordance with subparagraphs 7b, and no significant infiltration of liquid is identified in accordance with subparagraph 7c, then construction of the remaining portions of the clay perimeter wall shall proceed in the same manner as the construction of the west wall so as to ensure a permeability factor at least equivalent to the test results for the west wall and to ensure that infiltration of liquid into the site through these newly constructed walls does not occur. In this event, Petitioner will submit narrative to staff describing the method used to construct the west wall and will document the construction of the remaining portions of the clay perimeter wall with pictures and narrative to ensure consistent construction practices.

ii. If said test results are unsatisfactory, or a significant infiltration of liquid is identified in accordance with subparagraph 7c, the parties will attempt to negotiate an acceptable alternative for the construction of the remaining portions of the clay perimeter wall, or failing an

agreement, submit the matter to the Hearing Officer for hearing and decision.

8. Condition nine of the February 16, 1982, letter is deleted and replaced by the following:

a. Petitioner's landfill will not be excluded from consideration as, and will be considered, one of the several sanitary landfills in Indiana which are, satisfactory repositories for special or "hazardous waste" as defined in 320 I.A.C. 5-2-1(19) (1982 Cum. Supp.) (hereafter called "special waste"). The parties specifically agree that no "hazardous waste" as defined and identified in 320 I.A.C. 4-3 (1982 Cum. Supp.) (hereafter called "RCRA hazardous waste") shall be deposited at Petitioner's landfill after the effective date of this Order.

b. Petitioner shall be permitted to continue receiving the following "special wastes" from the effective date of this Order until further action of the Board or Staff:

1. U.S. Reduction Dust;
2. Asbestos fill from Borg-Warner and Amoco Oil (which waste streams were subject to Special Permission letters dated 5/17/77 and 5/14/80, respectively);
3. Corn Starch and carbon filters from American Maize Products Company (which waste streams were subject to a Special Permission letter dated 2/20/76);
4. The following steel mill sludges from J & L Steel Corporation: the Central Treatment Plant Sludge, the Terminal Treatment Plant Sludge, and the Sludge from the 6 Stand Oil Recovery Unit.

c. After the effective date of this Order, staff will send a letter to the generators of the special wastes listed in subparagraph b above, requesting that the generators submit further information regarding the nature of the waste streams identified in subparagraph 8b above, to staff within 60 days of receipt of such letter; it is expressly agreed that this 60 day period will be extended by staff for good cause shown. Staff will analyze such updated information, make a final determination whether these listed special wastes may continue to be disposed of at the site, and shall promptly notify the generator of the waste and Petitioner of its decision. Any such decision shall constitute a "final action" for which Petitioner may file a Petition For Hearing before the Board pursuant to IND. CODE §§ 4-22-1 (1982) and 13-7-11-3 (1982). Any

special permission letters issued for these listed wastes shall last one year. Renewal of such letters will be granted if the materials do not change significantly in quality or quantity, and if Petitioner's operation of the site is in compliance with this Agreed Order, and Petitioner's modified construction permit and operating permit.

d. It is the parties' intention that other "special wastes" of similar quality, quantity and composition as; and other "special wastes" presenting similar environmental hazards as, the above-listed special wastes will be considered for disposal at the site. The decision whether to allow "special wastes" in addition to those listed above to be deposited at Petitioner's site, must be made by staff on a case-by-case basis after considering the physical and chemical composition of the proposed waste as well as current operations at the site. Although it is impossible to make any guarantees in advance, staff agrees in principle that, given satisfactory operations and construction at the site in compliance with this Order; Operating Permit 45-2; and the modified construction plans approved Febuary 16, 1982, waste streams with similar chemical and physical composition, and waste streams presenting similar environmental hazards as the special wastes listed in subparagraph "b" above, will be considered suitable for disposal at the site.

e. The parties agree that materials such as debris, wood, construction refuse, steel, etc.; "coal ash" including fly ash and bottom ash (i.e. the resultant "ash" from coal burning); may be disposed of at the site without any special permission letters.

f. Petitioner agrees to submit a quarterly report to staff setting forth the types and amounts of "special wastes" disposed of at the site. These reports will be due the same day for the same period as the monitoring well reports referred to in paragraph 6 above.

g. Finally, the parties agree to cooperate in good faith in exploring the possibility of depositing the Georgia Pacific paper sludges and municipal treatment plant sludges at the site.

9. The parties agree that Petitioner's Operating Permit and amended Construction Permit shall last for a period of two years from the effective date of this Agreed Order. The renewal of this Operating Permit and amended Construction Permit, or the decision of whether to grant or renew special permission

letters referred to in paragraph 8b, 8c and 8d above, shall be based upon Petitioner's compliance with this Agreed Order, Petitioner's modified construction permit and operating permit and IND. CODE § 13-7. For the purpose of renewals of existing special permission letters (subparagraph 8c), granting and renewal of additional special permission letters (subparagraph 8d), and the renewal of Petitioner's Operating Permit and amended Construction Permit (paragraph 9), the phrase "compliance with this Agreed Order, Petitioner's modified construction permit and operating permit" shall include but not be limited to (1) any de minimus or insignificant variations from the Agreed Order and/or Petitioner's modified construction permit and operating permit, and/or (2) any inspection report which contains demerits, but which still shows an "acceptable" rating, and/or (3) any unacceptable rating on 40 percent or less of the inspection reports conducted by the State in any 12 month period.

Petitioner, Gary Development, Inc.

By Lawrence H. Hagen
Lawrence Hagen, Vice President & General Manager

Date: 2/14/83

INDIANA ENVIRONMENTAL MANAGEMENT BOARD

Technical Recommendation

By David D. Lamm
David D. Lamm, Director
Division of Land Pollution Control

Date: 2/16/83

By John M. Kyle III
John M. Kyle III

Approved For Legality And Form

Linley E. Pearson
Attorney General of Indiana

By Mathew S. Scherschel
Mathew S. Scherschel
Deputy Attorney General

Date: 2/16/83

By _____
E. Victor Indiano

Barnes & Thornburg
Attorneys for Petitioner

Date: February 9, 1983

Recommendation For Adoption

By _____
Hearing Officer

Date: 2-16-83

Indiana Environmental Management Board

By _____
Ralph Pickard, Technical Secretary

Date: February 28, 1983