US EPA RECORDS CENTER REGION 5
446317

Affidavit of Matthew T. Klein

I, Matthew T. Klein, state under penalty of perjury that the following facts are true:

1. From 1994 to 2001, I was employed as an enforcement case manager within the Office of Enforcement at the Indiana Department of Environmental Management.

2. During my employment at IDEM, one of the cases I worked on involved the Gary Development Company, Inc. Landfill.

3. I reviewed IDEM's public files and other documents or records within IDEM related to the Gary Development Company, Inc. Landfill.

4. I created a written chronology of significant events up to October 14, 1996 related to the Gary Development Company, Inc. Landfill.

5. Attached is a true and accurate copy of the chronology I developed on or about 1996 based upon my investigation and personal review of public records, while those sources were in existence, regarding the Gary Development Company, Inc., Landfill.

Date: 1/28/2011

Matthew T. Klein

STATE OF INDIANA
COUNTY OF Hamilton

Matthew T. Klein personally appeared before me this 28 day of January, 2011, and, being duly sworn, stated under penalty of perjury that the above facts are true.

Notary Public

DONNA A. GUNN
Hamilton County
My Commission Expires
July 1, 2012

Printed Name

My County of residence: Hamilton

My Commission Expires: July 1, 2012

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF:

LP-9J

May 8, 2009

RECEIVED
MAY 13 2009
DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT
OFFICE OF LAND QUALITY

Mr. Mike Sickels
Indiana Department of Environmental Management
Office of Land Quality/Remediation Services Branch
100 North Senate Avenue
Room IGCN 1154
Indianapolis, IN 46204

Dear Mr. Sickels:

Re: Gary Development – IND 077 005 916

In response to your recent request for Compliance Monitoring and Enforcement records relating to Gary Development, records from the Land and Chemicals Division (LCD) have been reviewed, duplicated and are enclosed (see enclosed list).

I would like to bring to your attention two folders that contain records usually considered "enforcement confidential." Leverett Nelson, Associate Regional Counsel, reviewed the folders on May 1, 2009, and determined that due to our partnership with IDEM, we would not withhold attorney notes that would usually be withheld from members of the general public. We ask that you guard against duplication, further release and distribution of the records found in the **C.3 Enforcement Confidential** folders.

The entire file is being provided free of charge, as I am not aware of your request being assigned as an official Freedom of Information Act request.

If you have any questions, please call me at 312-886-4188.

Sincerely,

Terri J. Rancher
Environmental Protection Specialist

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Gary Development
IND 097 005 916

A.2 Part A/Interim Status – records dated from 11/14/80 – 1/15/97

A.3.1 – A.3.4 Correspondence/Samplings (1983 -) – records dated 9/1/83 – 1/8/97

B.1.1 – B.1.8 Correspondence Variance/State (1982 -) - records dated 11/14/80 – 11/9/89

C.1 Compliance Inspection Report – records dated 8/19/87 – 2/1/95

C.2 Hazardous Waste Manifest (1980-1987) – records dated 12/5/80 – 11/18/87

C.2 Hazardous Waste Tracking Forms ('80 – '83) – records dated 12/3/81 – 12/31/82

C.2 Compliance Enforcement (1980 -) records dated 5/28/82 – 9/2/97

C.3 Enforcement Confidential (1979 – 1996) records dated 3/22/76 – 10/16/96

C.3 Enforcement Confidential – records dated 1/9/97 – 11/9/98

D.1.4 Preliminary Assessment Visual Site Inspection – records dated 6/17/85 – 9/25/87

F.1 Imagery and Special Studies – records dated 9/26/96 – 1/22/97

Suspense (records yet to be classified and filed) records dated 4.8.96 – 3/23/00

JAWORSKI, MARK

From: LOLLAR, BARB
Sent: Tuesday, February 23, 2010 5:10 PM
To: JAWORSKI, MARK
Subject: FW: Ownership of Gary Development Landfill

fyi

From: Joest, David
Sent: Tuesday, February 23, 2010 5:08 PM
To: LOLLAR, BARB; RORICK, STAN
Subject: Re: Ownership of Gary Development Landfill

Barb-
It sounds likely that this is an abandoned site with no viable owner. I wouldn't waste much time on it.

From: LOLLAR, BARB
To: Joest, David; RORICK, STAN
Sent: Tue Feb 23 16:41:50 2010
Subject: FW: Ownership of Gary Development Landfill

Do either of you have a good suggestion for Mark as to how to determine ownership? other than a title search?
Thanks.

From: JAWORSKI, MARK
Sent: Tuesday, February 23, 2010 4:09 PM
To: LOLLAR, BARB
Subject: Ownership of Gary Development Landfill

Hi Barb,
I left you a voice mail stating that EPA wants us to determine who owns the Gary Development Landfill. I did call the Lake County Indiana Auditor's Office and Dan Holabowski said that the property consists of three parcels but the tax records show that the property was tax exempt which would make it city owned. Mr. Holabowski said that something doesn't seem right because Mr. Larry Hagen is listed as the original owner but he has not paid taxes on it for nearly 20 years. He told me to contact the county commissioners. I did and an assisstant for the commissioner said that they have no knowledge of the property. The property has gone up for tax sale but never has been sold. I need help to determine ownership for EPA. We are currently putting paperwork together to list the site on the NPL (Superfund).
Thanks
Mark

1B1

REFERENCE 76
Page 1

TSD - RCRA INSPECTION REPORT

EPA ID # IND 077 005 916 NAME Gary Development Co. Inc.

MAILING ADDRESS: 479 N. Clark Ave. P.O. Box 6056
Gary, In. 46406

LOCATION ADDRESS: (same)

CONTACT: Mr. Lawrence Hagen / VP PHONE: 219-944-7858

OWNERSHIP: Gary Development Co. Inc. COUNTY: Lake

STATUS CODE: 5 1=Active 3=Dead Mail 4=PCB handler
6=non-handler 2=Obsolete ID # 9=Superfund site
5=Out of business

ACTIVITY: (This should reflect the actual functioning of the facility)

LQG ____ SQG ____ CEG ____ TRANSPORTER ____ TSD X UI ____

TRANSPORTERS: Air ____ Rail ____ Hwy ____ Water ____ Other ____

HAZARDOUS WASTE FUEL : Gen mktg burner ____ other mktr ____ burner ____
OFF SPEC USED OIL FUEL : Gen mktg burner ____ other mktr ____ burner ____
SPEC USED OIL FUEL MKTR : ____
BURNING DEVISE : Util boiler ____ Indus boiler ____ Indus furn ____

Person(s) interviewed:	Title:	Telephone:
Larry Hagen Jr.	(Son of owner)	219-944-7853
Brian Boyd	Guard	"

Inspector(s):	Agency:	Telephone:
Ted Warner	IDEM	317-232-4462

Date of inspection: 3-7-91 Time of inspection: 9:00 AM

12stallation Processes by Process Code (EPA Form 3510-3)

S01	___	Container storage	T03	___	Incinerator treatment
S02	___	Tank storage	T04	___	Other treatment
S03	___	Waste pile storage	D79	___	Injection well disposal
S04	___	Surface impoundment storage	D80	X	Landfill disposal
T01	___	Tank treatment	D81	___	Land application disposal
T02	___	Surface impoundment treatment	D83	___	Surface impoundment disposal

If Part A process codes are listed above as T04 please describe the process involved below:

1) Indicate any hazardous waste processes, by process code, which have been omitted from Part A of the facility's permit application. (HWIMS 610)

2) Indicate any hazardous waste processes (by process code and line number on EPA Form 3510-3 page 1 of 5) which appear to be eligible for exclusion per 40 CFR 265.1(c). Provide a brief rationale for the possible exclusion.

3) Type of Operation, Products Manufactured, Processes Utilized, Size of Operation, Concentrate on processes that produce waste (hazardous or non-hazardous)!

1) S01 - Possible storage of hazardous waste in large rolloff Boxes

3) Landfill (Not in operation)

4) If any of the wastes are managed in the manners listed below, please check those areas and utilize the provided appendices.

		YES	NO
A)	Waste Oil Fuel - Appendix A	___	X
B)	Lead Acid Batteries - Appendix B	___	X
C)	Hazardous Waste Fuel - Appendix C	___	X
D)	Precious Metals - Appendix D	___	X
E)	Use Constituting Disposal - Appendix E	___	X
F)	Tanks	___	X
G)	Use and Management of Containers	___	X

	YES	
H) Generator Accumulation Appendix	—	
I) Waste Pile	—	
J) Surface Impoundment	—	
K) Landfill	—	

5) Hazardous Waste Streams/EPA #

Hazardous Waste Streams/EPA #	Source	Rate	Disposition
Leachate	Break-outs	undetermined	NW Impoundment

6) List all wastes not listed above.

Waste	Process Generating Waste	Rate	Disposition

PREINSPECTION FILES AUDIT
CHECKLIST

DATE: 2/27/91

BY: TFW

COMPANY: Gary Development Co. Inc.

LOCATION: 479 N. Cline Ave.

I.D.#: IND / 077 / 005 / 916

Type of inspection: G----T----TSD----Closure---Complaint---Other(please specify)

Site Closed

A. GENERAL

		YES	NO	NA
1.	FEDERAL NOTIFICATION ON FILE?		X	
2.	FEDERAL PART A ON FILE?	X		
3.	CLOSURE PLAN REVIEWED?		X	
4.	CONTINGENCY PLAN REVIEWED?		X	
5.	BIENNIAL REPORT REVIEWED?		X	
*6.	PART B PERMIT REVIEWED?		X	

*(Note any Special Permit Conditions)
Comments:

B. NOTIFICATION DATA (Notify type, waste codes listed, etc.)

F006, F005, K087, F003

C. LAND DISPOSAL INFORMATION

1. List Waste and Land Disposal Facility

N/A

D. LIST POSSIBLE WASTE STREAMS NOT LISTED ON BIENNIAL REPORT

Hazardous Waste leachate

E. LIST WASTE MANAGEMENT PRACTICES WHICH MAY REQUIRE A PERMIT

The landfill operation

F. FEDERAL PART A (Handling Codes), OR PART B PERMIT

	Code	Amount	Unit of Measure
1.	D80	100	A
2.			
3.			
4.			
5.			

Are there any descrepancies regarding multiple Part A submittals?

G. CLOSURE/POST CLOSURE

1. Any Closed Units: If yes, describe:

NO

H. COMPLIANCE HISTORY

List past two inspections and enforcement actions (CO, NOV, VL, WL)

Date of inspection	Action type	Date of Action
4-28-88	Ref. to EPA	
6-8-90	"	

I. LIST UNRESOLVED ENFORCEMENT ACTIONS/VIOLATIONS

V-W-86-R45

J. BRIEFLY SUMMARIZE PREVIOUS VIOLATIONS. NOTE IF THEY ARE REPEATS.

Failure to comply with State and Federal hazardous waste regulations regarding the landfilling of hazardous waste

K. LIST ANY ITEMS UNDER COMPLIANCE SCHEDULES WHICH ARE NOT YET COMPLETED OR NEED FIELD VERIFIED

L. COMMENTS

Oct. 22, 1985 IDEM (OSHWM) referred enforcement information to EPA. OSHWM feels that Gary Development received several loads of manifested hazardous waste; therefore, the facility must be required to go through formal closure.

On May 30 1986 a federal Complaint and Compliance Order V-W-86 R-45 was issued to Gary Development.

On September 9 thru the 11, 1987 a hearing was held in the Gary Court house regarding Gary Development federal Complaint. As of this date there has been no decision regarding the status of Gary Development.

LANDFILLS
40 CFR 265 Subpart N, 329 IAC 3-28
(HWIMS 460)

General Operating Requirements

	OK	DF	NI	NA
1) Does the facility maintain a proper run-on control system? 40 CFR 265.302 (a) (329 IAC 3-28-3 (a))	X			
2) Does the facility maintain a proper run-off system? 40 CFR 265.3022 (b) (329 IAC 3-28-3 (b))		X		
3) Are run-off and run-on collection and holding facilities managed or emptied expeditiously after storms? 40 CFR 265.302 (c) (329 IAC 3-28-3 (c))		X		
4) Is wind dispersal of hazardous waste managed? 40 CFR 265.302 (d) (329 IAC 3-28-3 (d))		X		

Please describe run-on and run-off control activities or any problems noted.

See field trip report

Surveying and Recordkeeping

1. Does the operating record include:				
a. a map, showing the exact dimensions including depth, of each cell with respect to permanant surveyed benchmarks. 40 CFR 265.309 (329 IAC 3-28-4)			X	
b. the contents of each cell and approximate location of each hazardous waste type within each cell. 40 CFR 265.309 (329 IAC 3-28-4)			X	

Special Requirements - Ignitable and Reactive Waste - Landfills

1. Is all ignitable or reactive waste treated, or otherwise rendered non-ignitable or non-reactive before or immediately after placement in the landfill. 40 CFR 265.312 (329 IAC 3-28-6)				X
2. Are the general requirements for treatment of ignitable waste at 329 IAC 3-16-8 complied with. (E.g. Prevention of fires, explosions, toxic fumes, integrity of treatment devices, or threats to human, health, and environment, etc.) 40 CFR 265.312 (329 IAC 3-28-6)				X

3. If ignitable or reactive waste is not rendered non-ignitable or non-reactive is the waste containerized and managed in a manner which prevents ignition of the waste.
40 CFR 265.312 (329 IAC 3-28-6) ___ ___ ___ X

Special Requirements for Incompatible Waste - Landfills

1. Does the operators place incompatible waste in separate cells. (See 329 IAC 3-32-5 for examples)
40 CFR 265.313 (329 IAC 3-28-7) ___ ___ ___ X

2. If incompatible waste is placed in the same cell is the general requirements at 329 IAC 3-16-8 complied with.
40 CFR 265.313 (329 IAC 3-28-7) ___ ___ ___ X

Special Requirements for Bulk and Containerized Liquids - Landfills

1. Has the facility complied with the prohibition against placement of bulk or noncontainerized liquid hazardous waste or hazardous waste containing free liquids in the landfill. 40 CFR 265.314 (329 IAC 3-28-8a) ___ ___ ___ X

2. Has the facility placed any non hazardous liquids in the landfill without permission of the commissioner.
40 CFR 265.314 (329 IAC 3-28-8e) ___ ___ ___ X

3. Has the facility complied with the requirements for containers holding free liquids:
   a. All free liquids have been removed , or
   b. has been mixed with absorbant or solidified, or
   c. only containers designed to hold free liquids for use other than storage have been accepted (e.g. batteries, capacitors, lab packs)

   40 CFR 265.314 (329 IAC 3-28-8c) ___ ___ ___ X

4. Does the facility use the "Paint Filter Liquids Test" to check for the presence of free liquids according to the procedures specified in their waste analysis plan.
40 CFR 265.314 and 265.13 (b)(6) (329 IAC 3-28-8d), (329 IAC 3-16-4 (b)(6)) ___ ___ ___ X

Special Requirements for Containers - Landfills

1. With the exception of very small containers such as ampules are all containers at least 90% full when placed in the landfill 40 CFR 265.315 (329 IAC 3-28-9(1)) ___ ___ ___ X

2. If not 90% full are the containers crushed, shredded, or similarly reduced in volume before burial in the landfill.
40 CFR 265.315 (329 IAC 3-28-9(2)) ___ ___ ___ X

Page _____

Lab Packs - Landfills

	OK	DF	NI	NA
1. Has the facility placed in the landfill only lab packs which have been packaged and prepared in accordance with 329 IAC 3-28-10.				X

General Facility Standards

1) Security - Do security measures include: (HWIMS 300)
(If applicable)

See 40 CFR 265.14 (329 IAC 3-16-5) for the following

	OK	DF	NI	NA
a. 24- hour surveillance?	X			
or				
b. i. Artificial or natural barrier around facility?	X			
and				
ii. Controlled entry?	X			
c. Danger sign(s) at entrance?	X			

Preparedness and Prevention:

Part 265 Subpart C

2) Maintenace and Operation of Facility (HWIMS 340, 810 spill)

	OK	DF	NI	NA
a. Is there any evidence of fire, explosion, or release of hazardous waste or hazardous waste constituent? 40 CFR 265.31 (329 IAC 3-17-2)			X	

The run-off, which appears to be contaminated which leachate, needs to be sampled.

	OK	DF	NI	NA
3) If required, does the facility have the following equipment: (HWIMS 340)				
a. Internal communications or alarm systems? 40 CFR 265.32(a) & 40 CFR 265.34(a) (329 IAC 3-17-3)	X			
b. Telephone or 2-way radios at the scene of operations? 40 CFR 265.32(b) & 40 CFR 265.34(b) (329 IAC 3-17-3)	X			
c. Portable fire extinguishers, fire control, spill control equipment and decontamination equipment? Are water hoses, foam equipment, automatic spinklers or water spray equipment available? (Please specify) 40 CFR 265.32(c) (329 IAC 3-17-3(c))	X			
4) Whenever waste is being handled do all personnel have immediate access to an alarm or communication device (thru another employee if always available)? 40 CFR 265.34(a) (329 IAC 3-17-5) (HWIMS 340)				X
5) Testing and Maintenace of Emergency Equipment: (HWIMS 340)				
a. Has the owner or operator established testing and maintenace procedures for emergency equipment? 40 CFR 265.33 (329 IAC 3-17-4)				X
b. Is emergency equipment maintained in operable condition? 40 CFR 265.33 (329 IAC 3-17-4)				X
6) Does the owner or operator maintain adequate aisle space for the movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment? (This applies to access for this equipment to reach hazardous waste management areas) 40 CFR 265.35 (329 IAC 3-17-6) (HWIMS 340)				X

Use and Management of Containers

Location of Unit East side of facility

(HWIMS 160/410)

(6) 3 with contents large roll-off Bins (20 to 30 yd)

	OK	DF	NI	NA
1) Are containers in good condition? no tailgate		✓		
2) Are containers compatible with waste in them?			✓	
3) Are containers managed to prevent leaks? run off		✓		
4) Are containers stored closed?		✓		
5) Are ignitable and reactive wastes stored at least 15 meters (50 feet) from the property line? (Indicate if waste is ignitable or reactive).			✓	
6) Are incompatable wastes stored in separate containers? (If not the provisions of 265.17(b) apply)			✓	
7) Are containers of incompatible waste separated or protected from each other by physical barriers or sufficient distance?			✓	
8) If required, are the following special requirements for ignitable, reactive, or incompatible wastes addressed?				
a. Special handling?			✓	
b. No Smoking signs?			✓	
c. Separation and protection from ignition sources?			✓	
9) Does the container storage area have adequate aisle space (about 2.5 feet)?	✓			
10) Can containers be inspected for leaks or deterioration without moving the containers during the inspection?	✓			

Preparedness and Prevention

11) Security - Do security measures include: (HWIMS 300)

	OK	DF	NI	NA
a. 24- hour surveillance? or	✓			
b. Barrier around facility including controlled entry?	✓			
c. Danger sign(s) at entrance?	✓			

12) Maintenace and Operation of Facility: (HWIMS 140/340, 810 spill)

	OK	DF	NI	NA
a. Is there any evidence of fire, explosion, or release of hazardous waste or hazardous waste constituent? no visual evidence				

	OK	DF	NI	NA
13) If required, does the facility have the following equipment: (HWIMS 140/340)				
a. Internal communications or alarm systems?				✓
b. Telephone or 2-way radios at the scene of operations?				
c. Portable fire extinguishers, fire control, spill control equipment and decontamination equipment? Are water hoses, foam equipment, automatic spinklers or water spray equipment available? (Please specify)				
14) Whenever waste is being handled do all personnel have immediate access to an alarm or communication device (thru another employee if always available)? (HWIMS 140/340)				

Testing and Maintenance of Emergency Equipment

(HWIMS 140/340)

	OK	DF	NI	NA
15) a. Has the owner or operator established testing and maintenace procedures for emergency equipment?			X	
b. Is emergency equipment in operable condition?				
16) Does the owner or operator maintain adequate aisle space for the movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment? (This applies to access for this equipment to reach hazardous waste management areas)				

*TSD's Only check for comments on back!

Use and Management of Containers

1) Are containers in good condition? 40 CFR 265.170 (329 IAC 3-23-1)
2) Are containers compatible with waste? 40 CFR 265.172 (329 IAC 3-23-3)
3) Containers managed to prevent leaks? 40 CFR 265.173(b) (329 IAC 3-23-4)
4) Are containers stored closed? 40 CFR 265.173(d) (329 IAC 3-23-4)
5) Are ignitable and reactive wastes stored at least 15 meters (50 feet) from the property line? (Indicate if waste is ignitable or reactive). 40 CFR 265.176 (329 IAC 3-23-6)
6) Are incompatable wastes stored in separate containers? (If not provisions of 265.17(b) apply) 40 CFR 265.177(a) (329 IAC 3-23-7)
7) Are containers of incompatible waste separated or protected from each other by physical barriers or sufficient distance? 40 CFR 265.177(c) (329 IAC 3-23-7)
8) If required, are the following special requirements for ignitable, reactive, or incompatible wastes addressed?
   a. Special handling?
   b. No Smoking signs?
   c. Separation and protection from ignition sources?
   40 CFR 265.17(a) (329 IAC 3-16-8)
9) Does the container storage area have adequate aisle space (about 2.5 feet)? [329 IAC 3-23-4 (c)]
10) Can containers be inspected for leaks or deterioration without moving the containers [329 IAC 3-23-4 (c)]
11)*Security-Do security measures include:
   a. 24- hour surveillance? or
   b. Barrier around facility including controlled entry?
   c. Danger sign(s) at entrance? 40 CFR 265.14 (329 IAC 3-16-5)
12) Maintenace and Operation of Facility
   a. Is there any evidence of fire, explosion, or release of hazardous waste constituent? 40 CFR 265.31 (329 IAC 3-17-2)
13) If required, does the facility have the following equipment:
   a. Internal communications or alarm systems?
   40 CFR 265.32 (a) & 40 CFR 265.34 (a) (329 IAC 3-17-3 & 5)
   b. Telephone or 2-way radios at the scene of operations?
   40 CFR 265.32 (b) & 40 CFR 265.34 (b) (329 IAC 3-17-3 & 5)
   c. Portable fire extinguishers, fire control, spill control equipment and decontamination equipment? Are water hoses, foam equipment, automatic spinklers or water spray equipment available? 40 CFR 265.32(c)[329 IAC 3-17-3(c)]
14) Whenever waste is being handled do all personnel have immediate access to an alarm or communication device (thru another employee if always available)?
   40 CFR 265.34(a)[329 IAC 3-17-5]
15) a. Has the owner or operator established testing and maintenace procedures for emergency equipment?
   40 CFR 265.33 [329 IAC 3-17-4]
   b. Is emergency equipment in operable condition?
   40 CFR 265.33 [329 IAC 3-17-4]
16) Does the owner or operator maintain adequate aisle space for the movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment? (This applies to access for this equipment to reach hazardous waste management areas) 40 CFR 265.35 [329 IAC 3-17-6]

*TSD's Only

STATE OF INDIANA
ENVIRONMENTAL MANAGEMENT BOARD
INDIANAPOLIS, 46206
1330 West Michigan Street
P.O. Box 1964

April 19, 1982

TO: Hon. Linley Pearson
Attorney General

Attention: Brenda Rodeheffer
Coordinator, Environmental Law Section

FROM: Ralph C. Pickard
Technical Secretary

SUBJECT: Request for Representation
Gary Development Landfill
Lake County

The Gary Development Landfill has been issued an amendment to its construction permit and a renewal of its operating permit, both with conditions. Pursuant to IC 13-7-10-5(b), the Gary Development Company, Inc., has appealed these conditions and request a hearing on this matter. See attached summary and copy of their request. Consequently, in accordance with the authorization granted the Technical Secretary by the Environmental Management Board, a hearing officer has been appointed to schedule a hearing date for this matter.

It is hereby requested that you appoint an attorney to represent the staff of the Division of Land Pollution Control in the proceedings. Please contact Mr. William Morgan of the Facility Inspection Section or Mr. Dan Magoun so that a meeting may be scheduled to further discuss this matter. Enclosed are copies of relative material in this matter.

SM/jb
Enclosure
cc: Wayne Penrod
Dan Magoun

STATE BOARD OF HEALTH

INDIANAPOLIS

OFFICE MEMORANDUM

DATE: April 19, 1982

TO: Ralph C. Pickard, Technical Secretary
Environmental Management Board

THRU:

FROM: William Morgan
Facility Inspection Section

SUBJECT: Request for Hearing
Gary Development Landfill
Lake County

Gary Development Landfill has been issued an amendment to its construction permit and a renewal of its operating permit, both with conditions. They have since appealed these conditions and request that a hearing be held on this matter. A complete summary is attached along with a copy of their request.

Therefore, pursuant to the authority delegated to you by the Environmental Management Board, it is requested that a hearing officer be appointed so that he may establish a time and place for a hearing to resolve this matter.

SM/jb
Attachments
cc: Wayne Penrod
Dan Magoun

make a file

STATE BOARD OF HEALTH

INDIANAPOLIS

OFFICE MEMORANDUM

DATE: April 19, 1982

TO: James M. Garrettson
Water Pollution Control

THRU:

FROM: Ralph C. Pickard, Technical Secretary
Environmental Management Board

SUBJECT: Assignment as Hearing Officer

This is to advise you that you have been appointed by me to serve as hearing officer on behalf of the Environmental Management Board in the following matter:

Appeal of Permit Conditions by Gary Development Landfill
Lake County

A copy of the technical staff's request for hearing is enclosed for your information. Please have a Cause No. assigned, schedule times and places for a prehearing conference and hearing in this matter, and prepare the appropriate notice for my signature.

SM/jb
Enclosure

Summary
Request for Hearing
Gary Development Landfill
Lake County

On June 21, 1973, Oral H. Hert, Technical Secretary, approved the construction of a sanitary landfill located on Cline Avenue, north of the Grand Calumet River within the SW¼ of Section 35, T37N, R9W, in Lake County containing approximately 62 acres.

On February 20, 1975, Oral H. Hert, Technical Secretary, approved the operation of this site and issued Operating Permit No. 45-2.

On March 2, 1977, a prehearing conference was held with Mr. Larry Hagen of the above-mentioned facility to prepare an Agreed Order for the site to submit modified plans, correct leachate discharges, and discontinue accepting unapproved industrial waste. Mr. Hagen subsequently refused to sign this Agreed Order.

On June 15, 1979, another prehearing conference was held in East Chicago. At this time another Agreed Order was established for continued operation of this site and Mr. Hagen indicated he would sign this one. During this two year period, some hearings were held with Mr. Hagen but were continued due to attorney changes and time conflicts.

On May 20, 1980, the Stream Pollution Control Board adopted the previously negotiated Agreed Order, Cause No. B-406. The Agreed Order specified that this would be a provisional operating permit for one year from date of approval. It also specified many conditions for operation.

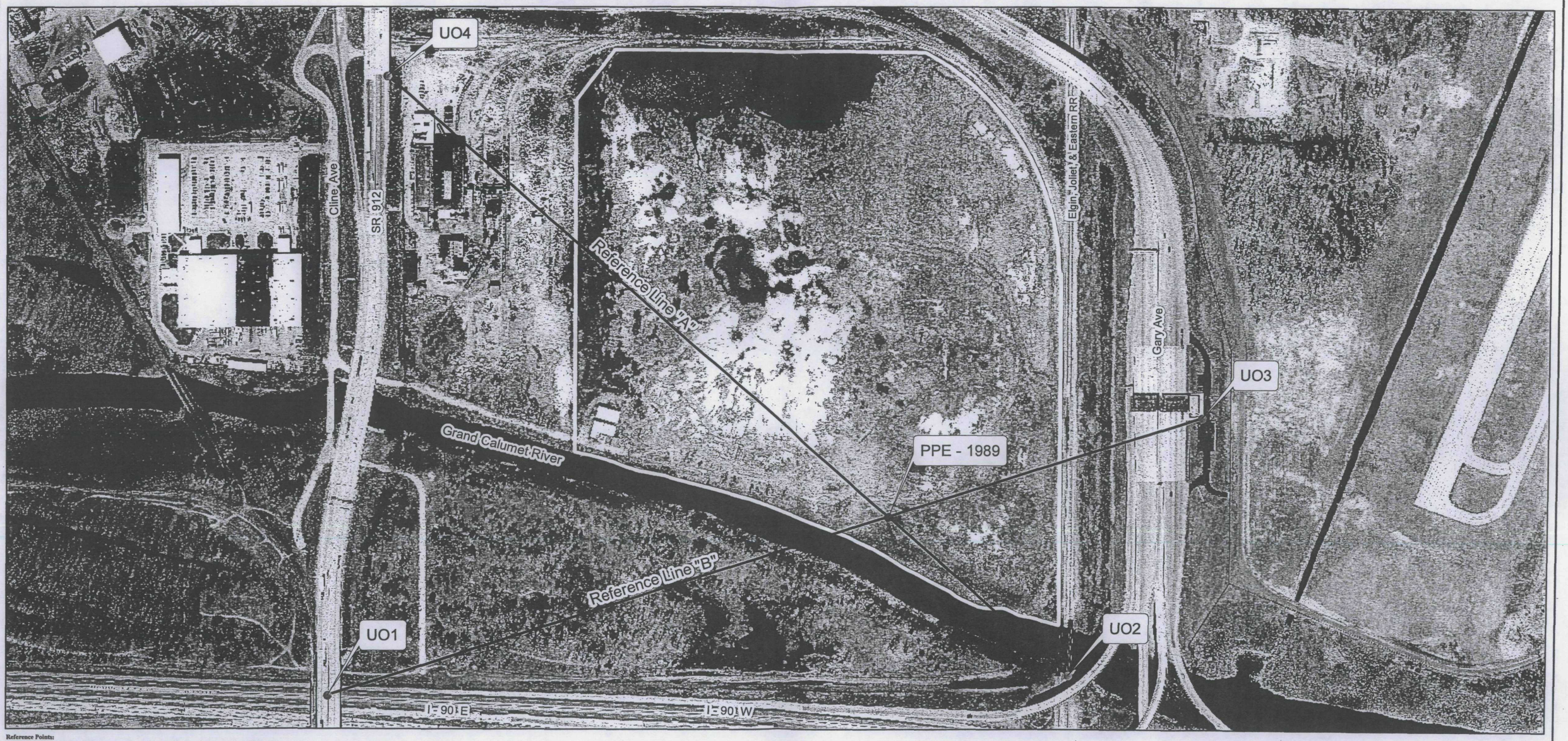
On February 16, 1982, an amendment to the Construction Plan Permit SW 133 was issued with conditions and on that same date a renewal of Operating Permit No. 45-2 was issued with conditions also. A copy of each letter is attached.

On March 11, 1982, the Board received a request from Mr. Hagen's attorney, Terry K. Hiestand, appealing the conditions of the operating permit renewal letter and the construction plan amendment letter both of February 16, 1982. This letter also requested that a hearing be held pursuant to IC 13-7-10-5(b).

Recommendation: Staff recommends that a hearing officer be appointed and allowed to schedule the time and date of a hearing to resolve this matter.

SM/jb
Attachment

Probable Point of Entry (PPE) Map - 1989, Gary Development Landfill
Gary, Lake County, Indiana (U.S. EPA ID: IND077005916)



Reference Points:

UO1: The general location of the reference point is southwest of the Gary Development Landfill property. The reference point is at the intersection of State Road 912 (middle of bridge deck) and the middle of Interstate 90 (dividing barrier).

UO2: The general location of the reference point is southeast of the Gary Development Landfill property. The reference point is at the south end of the easternmost of two railroad bridges of the Elgin, Joliet, & Eastern Railroad as it crosses the Grand Calumet River.

UO3: The general location of the reference point is east of the Gary Development Landfill property. The reference point is at the toll booth administrative building (the easternmost building) at the southeast corner of the sidewalk next to the parking lot.

UO4: The general location of the reference point is northwest of the Gary Development Landfill property. The reference point is at northbound State Road 912 at the bridge over Gary Avenue where the pavement changes at the edge of pavement at the south end of the bridge deck.

N W E S

Sources:

Non Orthophotography Data
- Obtained from the State Land Office, 1989 Digital Aerial Photography

Orthophotography - *Obtained from IndianaMap Framework Data* (2005 Digital Orthophotography) (www.indianamap.org)

Map Projection: UTM Zone 16 N **Map Datum:** NAD83

This map is intended to serve as an aid in graphic representation only. This information *is not warranted for accuracy or other purposes.*

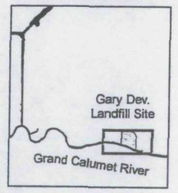
Mapped By: Mike Hill, Office of Land Quality
Date: 2/16/2010

IDEM

- PPE - 1989
- PPE Reference Point
- Reference Line
- Approximate Site Boundary

0 75 150 Meters
0 250 500 Feet

Site Vicinity



Lake County, IN

STATE OF INDIANA

INDIANAPOLIS

STATE BOARD OF HEALTH
AN EQUAL OPPORTUNITY EMPLOYER

Address Reply to:
Indiana State Board of Health
1330 West Michigan Street
P. O. Box 1964
Indianapolis, IN 46206

IND077005916

June 1, 1982

Mr. Richard Shandross
U.S. EPA
Region V
111 West Jackson Street
Chicago, IL 60604

Dear Mr. Shandross:

Re: Status of Gary Development Landfill
Lake County

As you are aware, the Environmental Management Board is currently in litigation with Gary Development Landfill over the disposal of hazardous wastes at the site. At a prehearing meeting, the representative from Gary Development Landfill admitted there was some question about his interim status with Region V, but he contended that he had filed all the necessary papers in a timely fashion, and that since he had an I.D. number, he must have interim status to accept hazardous waste. To the best of staff's knowledge, he has continued to accept RCRA hazardous waste.

Staff requests documentation from your office as to the current status of Gary Development's interim status permit so such information may be utilized in our proceedings. The hearing for this site is set for June 18, 1982, and staff would appreciate a response in writing prior to that date.

If you have any questions, please feel free to contact this office.

Very truly yours,

Bruce H Palin

Bruce H. Palin, Acting Chief
Engineering Section
Technical Support Branch
Division of Land Pollution Control

BHP/tr
cc: Mr. Bill Miner
Mr. Mathew Schershel

RECEIVED 6/03/82

RECEIVED
WASTE MANAGEMENT BRANCH
EPA REGION V

June 16, 1976

Mr. Larry C. Rowe, Plant Manager
U. S. Reduction Company
P. O. Box 30
East Chicago, Indiana 46312

Dear Mr. Rowe:

Re: Disposal of Waste Materials

This will confirm receipt of your letter concerning the disposal of waste residue from your proposed Salt Recovery Plant. It is understood your company has approximately 40,000 pounds of sludge cake per day to be disposed. This sludge cake is about 65 percent solids, and made up of mainly inert substances.

We offer no objection to the disposal of this sludge cake at the following sanitary landfills:

1. Porter Landfill, located on U. S. 49, northeast of Valparaiso, Porter County, contact: Mr. Delmar Ryby
   P. O. Box 240, Portage, IN 46368
   phone number AC 219/464-3506

2. Gary Land Development, located at Gary Avenue and Cline Avenue in Gary, Lake County, contact: Mr. Larry Hagen
   479 North Cline Avenue
   P. O. Box 6213, Gary, IN 46406
   phone number AC 219/944-7858

This sludge cake may be mixed with the regular refuse, and the entire area compacted and covered daily with at least six inches of soil. Please contact this office upon securing a site for disposal. We have also enclosed a copy of Regulation SPC-18 for your information.

If you have any questions, please contact Mr. Johnie Baker of this office for assistance at AC 317/633-6400.

Very truly yours,

Enclosure
JHB/mf

Roland T. Dove, Director
Division of Solid Waste Engineering

cc: Mr. Pat Stevens
Mr. Gary Williams

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

BEFORE THE ENVIRONMENTAL MANAGEMENT BOARD OF THE STATE OF INDIANA

1982

IN THE MATTER OF
GARY DEVELOPMENT COMPANY, INC.,

Petitioner,

v.

THE ENVIRONMENTAL
MANAGEMENT BOARD OF THE
STATE OF INDIANA,

Respondent.

CAUSE NO. N-53

MOTION TO SHORTEN TIME IN WHICH TO RESPOND

Comes now Gary Development Company, Inc., by counsel, and moves that the Hearing Officer shorten the time in which Respondent has to respond to Petitioner's requests for admissions and requests for the production of documents (second set) filed this same day, and in support thereof, states as follows:

1. This matter is set for an adjudicatory hearing on December 14, 1982.

2. It will be absolutely essential to have Respondent's responses to the above-referenced requests for admissions and requests for the production of documents on or before December 10, 1982 so as to allow Petitioner to be able to review and digest these responses prior to trial.

3. The requests for admissions do not present an onerous burden to Respondent in that they do not require

production of documents or typing of lengthy interrogatory answers, but rather require admissions or denials.

4. The requests for production of documents cover a variety of items that Respondent promised to produce to Petitioner at the depositions which were held on October 14 and 19, 1982. Despite this promise, and despite the lapse of over forty-two days, Respondent has not adhered to its promise and has not produced the requested information. Therefore, the requests for production of documents do not create an additional burden for Respondent to shoulder.

5. In general, this discovery request does not place an onerous burden on Respondent. Moreover, answers to these requests will help to narrow the issues for the upcoming hearing and to shorten the amount of time that will be necessary to present evidence at that hearing.

WHEREFORE, Petitioner prays that the Hearing Officer shorten the time in which Respondent has to respond to the above-referenced requests for admissions and requests for the production of documents; that the Court order that Respondent answer these requests for admissions and requests for the production of documents by 5:00 p.m., December 10, 1982; and for all other necessary and appropriate relief in the circumstances.

Respectfully submitted,

John M. Kyle III

John M. Kyle III

E. Victor Indiano

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing "MOTION TO REDUCE TIME IN WHICH TO RESPOND" has been served on the Respondent this 1st day of December, 1982, by hand-delivering a copy thereof to:

Mathew S. Scherschel
Deputy Attorney General
Counsel for Environmental Management
Board of the State of Indiana
Room 219, State House
Indianapolis, Indiana 46204

John M. Kyle III

John M. Kyle III

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.

THE ENVIRONMENTAL MANAGEMENT BOARD OF THE STATE OF INDIANA,

Respondent.

RECEIVED
OCT 20 1982
INDIANA STATE BOARD OF HEALTH
ASSISTANT COMMISSIONER FOR
ENVIRONMENTAL HEALTH

RESPONSE TO RESPONDENT'S MOTION FOR CONTINUANCE

Comes now Gary Development, Inc., by counsel, and objects to Respondent's motion for a continuance of the hearing currently set for Tuesday, October 26, and in support of this response, states:

1. On March 8, 1982, Petitioner filed a request for a hearing contesting the terms and conditions imposed upon the renewal of its operation permit sent to Petitioner by the State by letter dated February 16, 1982.

2. On May 6, 1982, Ralph Pickard sent a Notice of Hearing to Petitioner establishing a hearing date in this matter of June 18, 1982.

3. The hearing set for June 18, 1982, was continued at the request of the State and reset for June 24, 1982. This June 24, 1982, hearing was in turn continued and reset for July 27, 1982.

4. The firm of Barnes & Thornburg first became involved in this case in early July, 1982. Petitioner filed a Motion For Continuance to allow Barnes & Thornburg additional time to familiarize itself with the case, engage in written discovery, and to take several depositions prior to trial. The undersigned contacted Mathew Scherschel, Deputy Attorney General in charge

CORRECTION

The preceding document has been re-photographed to assure legibility and its image appears immediately hereafter.

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,

vs.

THE ENVIRONMENTAL MANAGEMENT BOARD OF THE STATE OF INDIANA,

Respondent.

CAUSE NO. N-53

JUL 14 3:29 PM '82
STATE OF INDIANA
ENVIRONMENTAL MANAGEMENT
BOARD

ORDER

Comes now the Petitioner, Gary Development Company, Inc., by counsel, John M. Kyle III, and files a Motion For Continuance in the following words and figures, to-wit:

[H.I.]

And the Hearing Officer being duly advised, hereby grants said Motion and resets the above matter for hearing on all pending issues on Wednesday, September 22, 1982 at 9:30 o'clock a.m.

Hearing Officer

Notice to:

Mathew S. Scherschel, Deputy Attorney General
Counsel for Environmental Management Board of the State of Indiana
Room 219, State House
Indianapolis, Indiana 46204

John M. Kyle III, Esquire
Barnes & Thornburg
1313 Merchants Bank Building
Indianapolis, Indiana 46204
Telephone: (317) 638-1313

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.

THE ENVIRONMENTAL MANAGEMENT BOARD OF THE STATE OF INDIANA,

Respondent.

RECEIVED
OCT 20 1982
INDIANA STATE BOARD OF HEALTH
ASSISTANT COMMISSIONER FOR
ENVIRONMENTAL HEALTH

RESPONSE TO RESPONDENT'S MOTION FOR CONTINUANCE

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1. On March 8, 1982, Petitioner filed a request for a hearing contesting the terms and conditions imposed upon the renewal of its operation permit sent to Petitioner by the State by letter dated February 16, 1982.

2. On May 6, 1982, Ralph Pickard sent a Notice of Hearing to Petitioner establishing a hearing date in this matter of June 18, 1982.

3. The hearing set for June 18, 1982, was continued at the request of the State and reset for June 24, 1982. This June 24, 1982, hearing was in turn continued and reset for July 27, 1982.

4. The firm of Barnes & Thornburg first became involved in this case in early July, 1982. Petitioner filed a Motion For Continuance to allow Barnes & Thornburg additional time to familiarize itself with the case, engage in written discovery, and to take several depositions prior to trial. The undersigned contacted Mathew Scherschel, Deputy Attorney General in charge

of this case to discuss this Motion For Continuance, and requested that the hearing be rescheduled in approximately two (2) months. Mr. Scherschel showed great surprise at the length of the requested continuance, but the undersigned informed him that this period would be absolutely necessary to allow the parties to fully engage in discovery and depositions prior to trial. As a result, the hearing was rescheduled for September 22, 1982.

5. On August 25, 1982, Petitioner was forced to file a Motion To Reduce Time for the State to respond to Petitioner's first set of interrogatories, or in the alternative, a motion to continue the September 22, 1982 hearing, because the State had delayed producing certain essential information which information was a prerequisite to Petitioner undertaking discovery. Although this information had been requested July 8, 1982, it was not produced until August 16, 1982, while the undersigned was on vacation. The State was given the option of either responding to these interrogatories within thirteen (13) days or agreeing to a continuance. The State, through Brenda Rodeheffer, Deputy Attorney General, chose the latter option, and the hearing was reset for October 25, 1982.

6. Since then, the State has requested that the hearing be rescheduled for October 26, 1982. Petitioner has concurred with this request.

7. On October 19, 1982, <u>for the first time in all of these proceedings</u>, Matthew Scherschel indicated that he wished to undertake discovery of Petitioner on behalf of the State and that therefore, a continuance would be requested.

8. Petitioner cannot concur with this request or be sympathetic with the State's motion for continuance. The State has known about the pendency of this action since March 18, 1982, and has had <u>over seven (7) months</u> to file any discovery requests it wanted. Nevertheless, on October 19, 1982, -- <u>exactly one week before trial</u> -- the State belatedly decided to undertake discovery

necessitating a continuance. There can be no excuse for such a delay and no justification for such a request.

9. Mr. Scherschel has also indicated that his schedule, as well as the schedule of certain of the State's witnesses, was busy, and that it would be difficult to prepare for trial. Petitioner simply shows the Hearing Officer that the undersigned's schedule, as well as the schedule of certain key witnesses for the Petitioner, is also quite busy, but that Petitioner and the undersigned have been able to prepare for trial in advance, in spite of such schedules, and are ready to go to trial on October 26, 1982.

10. In short, the State's last minute requests to undertake discovery and for a continuance are baseless and unreasonable and the request for a continuance should be denied.

11. However, if the Hearing Officer sees fit to continue the October 26, 1982, hearing, Petitioner urges that such a continuance be for no more than one week. Petitioner's business continues to suffer greatly so long as this action is pending and wishes to end the uncertainity by presenting its case and receiving a decision at the earliest possible moment. Moreover, Petitioner will agree to expedite its responses to any reasonable discovery requests filed by the State.

WHEREFORE, Petitioner prays that the Hearing Officer not grant Respondent's motion for continuance, or in the alternative, if the Hearing Officer does grant such a continuance, that the continuance be for no more than one week from October 26, 1982, and for all other necessary and appropriate relief.

John M. Kyle, III

Of Counsel:

BARNES & THORNBURG
1313 Merchants Bank Building
Indianapolis, IN 46204
Telephone: (317) 638-1313

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing "Response To Respondent's Motion For Continuance" has been served on the Respondent by depositing a copy thereof in the United States First Class Mail, addressed to:

Mathew S. Scherschel, Deputy Attorney General
Counsel for Environmental Management Board of
the State of Indiana
Room 219, State House
Indianapolis, Indiana 46204

This 20th day of October, 1982.

John M. Kyle III

John M. Kyle, III

March 9, 1977

VIA CERTIFIED MAIL

Mr. Larry Hagen
Gary Land Development
479 North Cline Avenue
P. O. Box 6056
Gary, Indiana 46406

Dear Mr. Hagen:

Re: U.S. Steel, Terminal Treatment
Plant Sludge, Gary Plant

This will confirm your phone conversation with Mr. Bruce Palin concerning the above-referenced subject.

The staff is currently securing information regarding the chemical content and consistency of this waste. Until the complete analysis can be obtained and reviewed you are granted interim approval to accept this waste. This material should be mixed with the general refuse and covered daily.

If you have any questions, please contact Mr. Bruce Palin of the Solid Waste Management Section at AC 317/633-6400.

Very truly yours,

Roland P. Dove, Director
Division of Sanitary Engineering.

BHP/sjk
cc: Mr. Dan McArdle
U.S. Steel
Gary City Health Department
Lake County Health Department

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.

THE ENVIRONMENTAL MANAGEMENT BOARD OF THE STATE OF INDIANA,

Respondent.

CAUSE NO. N-53

ORDER REDUCING TIME FOR RESPONDENT TO REPLY TO PETITIONER'S FIRST SET OF INTERROGATORIES, REQUESTS FOR ADMISSIONS, AND REQUESTS FOR PRODUCTION OF DOCUMENTS

Comes now GARY DEVELOPMENT, INC., by counsel, and files its Motion to Reduce Time for Respondent to Reply to Petitioner's First Set of Interrogatories, Requests for Admissions, and Requests for Production of Documents, or in the Alternative, Motion for Continuance, in the following words and figures, to-wit:

[H.I.];

And the Hearing Officer being duly advised hereby finds that said Motion is meritorious and that the time in which Respondent should be allowed to reply to Petitioner's First Set of Interrogatories, Requests for Admissions, and Requests for Production of Documents, should be shortened.

And the Hearing Officer being duly advised, IT IS HEREBY ORDERED that Respondent shall deliver its responses to Petitioner's First Set of Interrogatories, Requests for Admissions, and Request for Production of

Documents to Petitioner's counsel no later than Tuesday, September 7, 1982.

IT IS ALSO ORDERED that any requests for admissions which are not admitted or denied by said date shall be deemed admitted.

IT IS FINALLY ORDERED that Respondent shall file its response to Petitioner's First Set of Interrogatories, Requests for Admissions, and Request for the Production of Documents with this Hearing Officer on or before September 7, 1982.

James Garrettson
Hearing Officer

Notice to:

Mathew S. Scherschel
Deputy Attorney General
Counsel for Environmental
Management Board of the
State of Indiana
Room 219, State House
Indianapolis, Indiana 46204

John M. Kyle III, Esquire
Barnes & Thornburg
1313 Merchants Bank Building
Indianapolis, Indiana 46204
Telephone: (317) 638-1313

Attachment A

RETURN RECEIPT

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

vs.

THE ENVIRONMENTAL MANAGEMENT BOARD OF THE STATE OF INDIANA

Respondent

CAUSE NO. N-53

NOTICE OF HEARING AND COMPLAINT

TO: Mr. Lawrence Hagen
Gary Development Co., Inc.
479 N. Cline Avenue
P.O. Box 6056
Gary, IN 46406

Mr. Terry K. Hiestand
Attorney at Law
P.O. Box 555
Chesterton, IN 46304

You are hereby notified, as provided by the Indiana Administrative Adjudication Act at IC 4-22-1-6 and the Indiana Environmental Management Act at IC 13-7-11, and pursuant to the authority therein granted, that the Environmental Management Board of the State of Indiana, on the 19th day of April, 1982, ordered that a hearing be held before Mr. James M. Garrettson, a duly authorized representative of the Environmental Management Board, acting on its behalf as its Hearing Officer.

You are further notified that the matters in issue and to be determined at this hearing relate to Petitioner's appeal of operating and construction permit conditions for Gary Development Landfill, Lake County.

Pursuant to IC 13-7-11-2 and IC 4-22-1-4, you are requested to attend a prehearing conference on May 17, 1982, at 1:30 p.m., E.S.T., in Room 336, Indiana State Board of Health Building, 1330 West Michigan Street, Indianapolis, Indiana, to attempt to reach a settlement on this matter prior to the hearing date. Arrangements for rescheduling of prehearing conference times or dates should be made by contacting Mr. James M. Garrettson at AC 317/633-0706.

Failing settlement at the prehearing conference you are further notified that a formal administrative hearing shall be held on June 18, 1982, at 1:30 p.m., E.S.T., in Room 336, Indiana State Board of Health Building, 1330 West Michigan Street, Indianapolis, Indiana.

You are entitled to be represented by counsel, to attend this hearing with witnesses and to present any testimony on your behalf in order to aid the Environmental Management Board in reaching a determination in this matter. Arrangements for rescheduling of the hearing time or date should be made by contacting the Hearing Officer at AC 317/633-0706, or by mail to the following address:

Mr. James M. Garrettson, Hearing Officer
Environmental Management Board
1330 West Michigan Street
Indianapolis, IN 46206

Written appearance of counsel should be promptly filed with the Hearing Officer if counsel is contemplated. Timely filing of written appearance by counsel may be considered in the granting of continuances.

Dated at Indianapolis, Indiana, this 6th day of May, 1982.

Ralph C. Pickard
Technical Secretary

cc: Office of the Attorney General
Attention: Brenda Rodeheffer
Mr. Dale Bryson, Region V, U.S. EPA
Lake County Health Department
Hearing Officer
bcc: Ronald G. Blankenbaker, M.D.
Mr. Dan Magoun
dw W/5 4-28-82

File

LAW OFFICES OF
TERRY K. HIESTAND
P. O. BOX 555
CHESTERTON, INDIANA 46304

TERRY K. HIESTAND
GREGORY T. BABCOCK

117 BROADWAY
219/926-2188

May 28, 1982

JUN 1 3 01 PM '82

Mr. James M. Garrettson
Hearing Officer
Environmental Management Board
1330 West Michigan Street
Indianapolis, Indiana 46206

RE: In the Matter of Gary Development, Inc., Petitioner v. The Environmental Management Board of the State of Indiana, Respondent
Cause No. N-53

Dear Mr. Garrettson:

With regard to the above matter, it is my understanding that the parties will be filing agreed stipulations on many of the issues raised, pursuant to the pre-hearing conference that the parties held on May 17, 1982. I am expecting a draft of those stipulations from the State soon.

It is my understanding that this matter is set for hearing on June 18, 1982. I wonder if you would be so kind as to send me five (5) Subpoenas for my use, in the enclosed self-addressed, stamped envelope.

Should you have any questions concerning this request, please do not hesitate to contact me.

Very truly yours,

LAW OFFICES OF TERRY K. HIESTAND

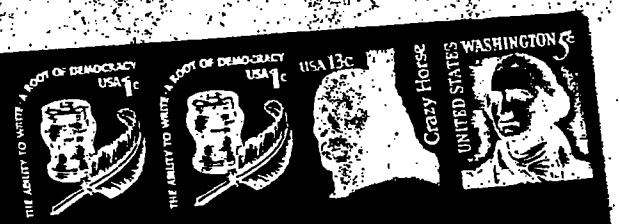
Terry K Hiestand

Terry K. Hiestand
Attorney at Law

TKH/jej
Enclosure
cc: Larry Hagen
George Oliver
Matthew Scherschel

Dictated, but not read.

Environmental Management Board
1330 West Michigan Street
Indianapolis, IN 46206



LAW OFFICES OF TERRY K. HIESTAND
117 Broadway, P.O. Box 555
Chesterton, IN 46304

STATE OF INDIANA

ENVIRONMENTAL MANAGEMENT BOARD

INDIANAPOLIS, 46206

1330 West Michigan Street
P.O. Box 1964

VIA CERTIFIED MAIL

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)
)
vs.) CAUSE NO. N-53
)
THE ENVIRONMENTAL MANAGEMENT BOARD)
OF THE STATE OF INDIANA)
Respondent)

NOTICE OF CONTINUANCE

TO: Mr. Terry K. Hiestand
Attorney at Law
P.O. Box 555
Chesterton, IN 46304

Please be notified that the Hearing in the above matter set for the 18th day of June, 1982, has been continued.

The Hearing date has been reset for the 24th day of June, 1982, at 1:30 p.m., E.S.T., in Room 336, Indiana State Board of Health Building, 1330 West Michigan Street, Indianapolis, Indiana. You are referred to the Notice of Hearing filed in this Cause for the issues upon which evidence may be heard at that time.

Dated at Indianapolis, Indiana, this 8th day of June, 1982.

James M. Garrettson, Hearing Officer

cc: Office of the Attorney General
Attention: Brenda Rodeheffer
Mr. Dale Bryson, U.S. EPA, Region V
Lake County Health Department
Mr. Lawrence Hagen

STATE OF INDIANA
ENVIRONMENTAL MANAGEMENT BOARD
INDIANAPOLIS, 46206
1330 West Michigan Street
P.O. Box 1964

SUBPOENA

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

The State of Indiana to the Sheriff of Lake County, Indiana, Greetings:

Pursuant to the authority provided by IC 4-22-1-21 you are hereby commanded by the Indiana Environmental Management Board to subpoena

_____

to personally be and appear before the Indiana Environmental Management Board or its duly designated representative on the 24th day of June, 1982, at 1:30 p.m.; E.S.T., in Room 336 of the Indiana State Board of Health Building, 1330 West Michigan Street, Indianapolis, Indiana, then and there to testify as witness in an action pending before said Board, to wit:

Gary Development, Inc.
Petitioner
vs. Cause No. N-53
Environmental Management Board
Respondent

and not to depart without leave of said Board or its hearing officer.

Witness, the Hearing Officer for the Environmental Management Board this 5th day of June, 1982.

James M. Garrettson
Hearing Officer

STATE of INDIANA

ENVIRONMENTAL MANAGEMENT BOARD

INDIANAPOLIS, 46206

1330 West Michigan Street
P.O. Box 1964

OPENING STATEMENT

THIS IS AN ADMINISTRATIVE HEARING BEING HELD THIS 24th DAY OF JUNE, 1982, IN ROOM 432, INDIANA STATE BOARD OF HEALTH BUILDING, 1330 WEST MICHIGAN STREET, INDIANAPOLIS, INDIANA, AT 1:30 p.m., E.S.T, AND BEING CONDUCTED PURSUANT TO IC 4-22-1, BEFORE AN AUTHORIZED REPRESENTATIVE OF AND ON BEHALF OF THE ENVIRONMENTAL MANAGEMENT BOARD IN A CAUSE DOCKETED BEFORE THE BOARD AS CAUSE NO. N-53,

IN THE MATTER OF GARY DEVELOPMENT, INC.
vs.
THE ENVIRONMENTAL MANAGEMENT BOARD OF
THE STATE OF INDIANA

NOTICE OF TIME AND PLACE OF HEARING WAS GIVEN AS PROVIDED BY LAW BY MAILING, BY CERTIFIED MAIL, NOTICE OF HEARING TO:

Mr. Terry K. Hiestand
Attorney at Law
P.O. Box 555
Chesterton, IN 46304

PROOF OF DELIVERY OF THIS NOTICE OF HEARING HAS BEEN RECEIVED BY THE BOARD AND THE NOTICE OF HEARING AND THE PROOF OF DELIVERY ARE NOW INCORPORATED IN THE RECORD OF THIS CAUSE BY REFERENCE AND PLACED IN THE OFFICIAL FILES OF THE BOARD.

NOTICE HAS ALSO BEEN GIVEN TO THE OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF INDIANA.

MY NAME IS JAMES M. GARRETTSON.

I AM A HEARING OFFICER FOR THE INDIANA STATE BOARD OF HEALTH AND HAVE BEEN APPOINTED BY THE ENVIRONMENTAL MANAGEMENT BOARD TO ACT AS HEARING OFFICER IN THIS CAUSE BY VIRTUE OF THE AUTHORITY GRANTED IN IC 13-7,

AND BY RESOLUTION ADOPTED BY THE ENVIRONMENTAL MANAGEMENT BOARD OF THE STATE OF INDIANA ON MAY 9, 1972.

MAY WE HAVE THE APPEARANCES OF COUNSEL, PLEASE?

WILL THE OFFICIAL REPORTER DESIGNATED FOR THIS HEARING PLEASE STAND AND RAISE HER RIGHT HAND AND STATE HER NAME?

(DO YOU SOLEMNLY SWEAR THAT YOU WILL KEEP COMPLETE AND TRUE NOTES OF ALL THAT TRANSPIRES IN THIS HEARING AND PREPARE A COMPLETE TRANSCRIPT THEREOF FROM YOUR NOTES AND FAITHFULLY PERFORM ALL THE DUTIES IMPOSED UPON YOU AS OFFICIAL REPORTER UNDER THE LAWS OF THE STATE OF INDIANA?) WILL ALL THOSE WHO KNOW THEMSELVES TO BE WITNESSES OR WHO MAY BE WITNESSES IN THIS CAUSE PLEASE STAND AND RAISE YOUR RIGHT HAND TO BE SWORN?

(DO YOU SOLEMNLY SWEAR THAT THE EVIDENCE THAT YOU WILL GIVE IN THIS CAUSE WILL BE THE TRUTH, THE WHOLE TRUTH AND NOTHING BUT THE TRUTH, SO HELP YOU GOD?)

DOES EITHER PARTY DESIRE TO MAKE AN OPENING STATEMENT AT THIS TIME?

WILL THE BOARD CALL ITS FIRST WITNESS, PLEASE?

****

IF THERE ARE NO OTHER WITNESSES TO BE CALLED, DOES EITHER PARTY CARE TO GIVE A CLOSING ARGUMENT?

FINAL STATEMENT

THESE PROCEEDINGS, PURSUANT TO NOTICE, ARE HEREBY CONCLUDED. THIS CAUSE IS, THEREFORE, ADJOURNED UNTIL FURTHER ORDER.

SUBPOENA

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

The State of Indiana to the Sheriff of Lake County, Indiana, Greetings:

Pursuant to the authority provided by IC 4-22-1-21 you are hereby commanded by the Indiana Environmental Management Board to subpoena

_____

to personally be and appear before the Indiana Environmental Management Board or its duly designated representative on the 24th day of June, 1982, at 1:30 p.m.; E.S.T., in Room 336 of the Indiana State Board of Health Building, 1330 West Michigan Street, Indianapolis, Indiana, then and there to testify as witness in an action pending before said Board, to wit:

Gary Development, Inc.
Petitioner
vs. Cause No. N-53
Environmental Management Board
Respondent

and not to depart without leave of said Board or its hearing officer.

Witness, the Hearing Officer for the Environmental Management Board this 8th day of June, 1982.

James M. Garrettson
Hearing Officer

6/7/82 jmt M-8

STATE OF INDIANA

ENVIRONMENTAL MANAGEMENT BOARD

INDIANAPOLIS, 46206

1330 West Michigan Street
P.O. Box 1964

March 1, 1983

VIA CERTIFIED MAIL

Mr. Lawrence Hagen
479 North Cline Avenue
P.O. Box 6056
Gary, Indiana 46406

Dear Mr. Hagen:

Re: In The Matter of
Gary Development, Inc.,
vs.
The Environmental Management Board
State of Indiana
Cause No. N-53

This is to inform you that the Indiana Environmental Management Board, at its regularly scheduled meeting of February 18, 1983, approved the Recommended Consent Decree negotiated between yourself or your representatives and members of our staff. A copy of the Final Order, executed by myself as Technical Secretary on behalf of the Board, is enclosed.

You are, no doubt, familiar with the terms of the Final Order necessary to ensure future compliance.

Very truly yours,

Ralph C. Pickard
Technical Secretary

DBM
Enclosure
cc: Lake County Health Department
Mathew Scherschel, Deputy Attorney General
John M. Kyle III
Ronald G. Blankenbaker, M.D.
Mr. Richard Sharpross, U.S. EPA
Acc: file Mitt

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.

THE ENVIRONMENTAL MANAGEMENT BOARD OF THE STATE OF INDIANA,

Respondent.

CAUSE NO. N-53

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 Scherrchel, 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 Calumet 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. 4.9×10^{-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 constructi 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. Hayen
Lawrence Hayen, 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 N. Kyle III
John N. 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: _____

Indiana Environmental Management Board

By _____
Ralph Pickard, Technical Secretary

Date: February 28 1983

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

BEFORE THE ENVIRONMENTAL MANAGEMENT BOARD OF THE STATE OF INDIANA

1982

IN THE MATTER OF
GARY DEVELOPMENT COMPANY, INC.,

Petitioner,

v.

THE ENVIRONMENTAL MANAGEMENT BOARD OF THE STATE OF INDIANA,

Respondent.

CAUSE NO. N-53

REQUESTS FOR ADMISSIONS AND REQUESTS FOR THE PRODUCTION OF DOCUMENTS

Pursuant to Rule 28(F) of the Indiana Rules of Trial Procedure, Petitioner, Gary Development Company, Inc., hereby propounds the following requests for admissions and requests for production of documents upon Respondent. The obligations imposed upon Respondent by Rules 26, 34, 36, and 37 of the Indiana Rules of Trial Procedure are incorporated by reference herein. Petitioner further requests that Respondent respond to these requests for admissions and produce the documents requested herein on or before December 10, 1982 for the reasons set forth in Petitioner's Motion to Shorten Time for Respondent to reply filed this same day. In answering the requests for admissions, please reproduce the requests in full prior to responding. For all requests for admissions which Respondent denies, please explain in reasonable detail the reason(s) for such denial. For requests having sub-parts, answer each sub-part separately.

The documents should be produced at the offices of BARNES & THORNBURG in Indianapolis, or any other mutually agreed-upon location.

A. REQUESTS FOR ADMISSIONS

1. Admit or deny that the Samocki Brothers dump, located in Lake County, Indiana, is an illegal dump site.

2. Admit or deny that the Cliff Roland dump, located in Lake County, Indiana, is an illegal dump site.

3. Admit or deny that the Gary Municipal dump, located in Lake County, Indiana, is an illegal dump site.

4. Admit or deny that the following sites are operated by Industrial Disposal or a company related thereto:

(a) Samocki Brothers dump site;

(b) Cliff Roland dump site.

5. Admit or deny that the following sites currently receive solid and/or liquid waste:

(a) Samocki Brothers dump site;

(b) Cliff Roland dump site;

(c) Gary Municipal dump site.

6. Admit or deny that the following sites have in the past received waste illegally:

(a) Samocki Brothers dump site;

(b) Cliff Roland dump site;

(c) Gary Municipal dump site.

7. Admit or deny that the following sites are presently receiving waste illegally:

(a) Samocki Brothers dump site;

(b) Cliff Roland dump site;

(c) Gary Municipal dump site.

8. Admit or deny that the State has been aware of illegal dumping being conducted at the Samocki Brothers dump site in Lake County Indiana since at least September of 1976.

9. Admit or deny that the State's attempts to stop illegal dumping have been unsuccessful with regard to:

(a) Samocki Brothers dump site;

(b) Cliff Roland dump site;

(c) Gary Municipal dump site.

10. Admit or deny the presence of illegal dump sites in Lake County, Indiana makes it difficult economically to run a lawfully permitted sanitary landfill in Lake County.

11. Admit or deny that the Gary Municipal dump site competes with the Gary Development landfill for disposal of refuse, especially municipal wastes.

12. Admit or deny that the following sites do not have and never have had permits to accept waste as sanitary landfills:

(a) Samocki Brothers dump site;

(b) Cliff Roland dump site;

(c) Gary Municipal dump site.

13. Admit or deny that foundry sand is not an inert material.

14. Admit or deny that foundry sand cannot legally be dumped at:

(a) Samocki Brothers dump site;

(b) Cliff Roland dump site;

(c) Gary Municipal dump site.

15. Admit or deny that any solid waste cannot legally be dumped at:

(a) Samocki Brothers dump site;

(b) Cliff Roland dump site;

(c) Gary Municipal dump site.

16. Admit or deny that foundry sand has been dumped directly into a body of water at the Roland site.

17. Admit or deny that foundry sand has been dumped directly into a body of water at the Samocki site.

18. Admit or deny that the staff of the Land Pollution Control Division has not initiated action through the Attorney General's Office to force the closure of

(a) the Cliff Roland dump site;

(b) the Samocki Brothers dump site.

19. Admit or deny that the State is aware of past illegal dumping activities of special wastes at

(a) the Roland dump site;

(b) the Samocki Brothers dump site.

20. Admit or deny that slag materials are acceptable for disposal at the Gary Development landfill.

21. Admit or deny that in the letter from the State's files dated October 9, 1980 to Industrial Disposal concerning the Roland site, Industrial Disposal agreed to perform certain remedial actions.

22. Admit or deny that as of the last inspection of the Roland dump site, Industrial Disposal had not fully complied with the terms of its October 9, 1980 agreement.

23. Admit or deny that the Gary Development landfill is operated in a more environmentally sound manner than

(a) the Samocki Brothers dump site;

(b) the Roland dump site;

(c) the Gary Municipal dump site.

24. Admit or deny that the Gary Development landfill poses less of a threat to the environment than

(a) the Samocki Brothers dump site;

(b) the Roland dump site;

(c) the Gary Municipal dump site.

25. Admit or deny that George Oliver is primarily responsible for the issuance of special permission letters.

26. Admit or deny that representatives of the Land Pollution Control Division have observed illegally disposed opened and closed barrels at

(a) the Samocki Brothers dump site;

(b) the Roland dump site;

(c) the Gary Municipal dump site.

27. Admit or deny that solid wastes are more likely to be better contained at the Gary Development landfill site than at

(a) the Samocki Brothers dump site;

(b) the Cliff Roland dump site;

(c) the Gary Municipal dump site.

28. Admit or deny that the external dewatering system is no longer required for the Gary Development landfill under the 1980 plans.

29. Admit or deny that the allegation by the State, even if true, that leachate was not taken to a waste water treatment plant, does not bear upon the integrity of the construction of the Gary Development landfill site.

30. Admit or deny that the allegation by the State, even if true, that the discharge of water into the Grand Calumet, by Petitioner, Gary Development Company, Inc. landfill, has no bearing on the integrity of the construction of the landfill.

31. Admit or deny that the allegation by the State, even if true, that the Gary Development landfill has failed to install a flow meter at the site, has no bearing on the intergrity of the construction of the Gary Development landfill.

32. Admit or deny that methane gas is normally not generated in refuse cells of a sanitary landfill in significant quantities until somewhere between five to fifteen years after the deposit of refuse in said cells.

33. Admit or deny that 320 IAC 5-5-9 does not place any time requirement upon the installation of gas vents at a landfill.

34. Admit or deny that 320 IAC 5-5-13 does not require that clay be applied for daily cover.

35. Admit or deny that sand is a native soil at the Gary Development landfill site.

36. Admit or deny that 320 IAC 5-5-13 requires only that the daily cover comprise at least six inches of compacted "soil" and that "soil" is not defined in the regulations.

37. Admit or deny that both the 1973 construction plans and the 1980 construction plans for the Gary Development landfill mention that material other than clay will be utilized for daily cover.

38. Admit or deny that the modified construction plans submitted by Petitioner on November 14, 1980 were not approved by the State until February 16, 1982.

39. Admit or deny that the State permits the placement of (a) shredder material and/or (b) bottom ash on top of a landfill's daily cover for use as a traction aid.

40. Admit or deny that central waste treatment sludge emanating from Jones & Laughlin Steel in Lake County, Indiana has been

(a) delisted by U.S. EPA from the list of RCRA hazardous wastes;

(b) granted a variance by the Environmental Management Board pursuant to 320 IAC 4-3-6;

(c) is no longer considered to be a RCRA hazardous waste.

41. Admit or deny that the State of Indiana forced the Gary Development landfill to abandon the use of the perimeter dewatering system shown in the 1973 plans.

42. Admit or deny that the native clay soil underlying the Gary Development landfill site is good quality clay for sanitary landfill applications.

43. Admit or deny that the native clay soil underlying the Gary Development landfill is a relatively impermeable clay.

44. Admit or deny that the State, when evaluating a request for a special permission letter for the disposal of a special waste, takes the position that the waste is a RCRA hazardous waste until proven otherwise.

45. Admit or deny that some of the special wastes for which the State requires a special permission letter are less hazardous to the environment than municipal refuse.

46. Admit or deny that not all waste for which special permission letters are granted are actually sent to the landfill designated on the special permission letter.

47. Admit or deny that once a special permission letter is granted by the State, the State has no mechanism for ensuring that a waste is actually sent to the landfill or other facility designated in the special permission letter.

48. Admit or deny that the staff of Land Pollution Control division believes the Gary Municipal Dump to be a large or serious hazard to public health and the environment.

49. Admit or deny that the open dump inventory identified approximately 150 open dump sites in Lake County, Indiana.

50. Admit or deny that distilled water would be considered a special waste requiring a special permission letter to be disposed in a sanitary landfill.

51. Admit or deny that contaminants or leachate from the Gary Development landfill are not likely to leach into the bedrock underlaying the native clay which underlays the Gary Development landfill.

52. Admit or deny that the fact that a pisometer well contains within it a level of water which is above the surface of the ground

(a) presents an unusual circumstance, indicating that a hydrostatic pressure is being exerted in the general area of the pisometer well;

(b) results from an artificially high water table.

53. Admit or deny that it is possible that the piles of mounded scrap metal on the Vulcan Materials' property adjacent to the western edge of the Gary Development landfill are exerting a hydrostatic pressure on the clay berm at the Gary Development landfill site.

54. Admit or deny that the State has never tested the walls at the Gary Development landfill to determine

(a) the degree of compaction;

(b) the permeability of the walls;

(c) the thickness of the walls.

55. Admit or deny that the pressure exerted upon a clay wall of a sanitary landfill, such as the sanitary landfill clay wall at the Gary Development landfill, would vary from the top of the wall to the bottom of the wall.

56. Admit or deny that the pressure exerted upon a sanitary landfill clay wall, such as the sanitary landfill clay wall at the Gary Development landfill, is greater at the bottom of the wall than at the top of the wall.

57. Admit or deny that the construction plans submitted in 1980 for the Gary Development landfill call for a clay berm to be "built in a sequential manner". ("Built in a sequential manner" is defined as the wall being extended laterally and vertically over a period of time, the rate of lateral and vertical extent being governed by the amount of refuse being deposited at the site.)

58. Admit or deny that there is no need to monitor the discharge of water into the Grand Calumet River if no water is being pumped into the Grand Calumet River.

59. Admit or deny that there is no need to install a flow meter on the discharge of water into the Grand Calumet River if no water is being discharged into the Grand Calumet River.

60. Admit or deny that the 1980 plans have amended the 1973 plans with those provisions of the 1980 plans which change the provisions of the 1973 plans, superceding the provisions of the 1973 plans.

61. Admit or deny that the current operations of the Gary Development landfill could be in compliance with the regulations and construction plans, without following the superceded requirements of the 1973 plans.

62. Admit or deny that the State has no proof that decomposition gases from the Gary Development landfill have either migrated laterally from the landfill site, or have been allowed to concentrate in a manner that will pose an explosion or toxicity hazard.

63. Admit or deny that the final completion date for the construction of the clay berm at the Gary Development landfill site is not a firm established date.

64. Admit or deny that materials such as bottom ash and shredder material are commonly used by the landfill operators as traction aids in landfills.

65. Admit or deny that it is practically difficult to drive vehicles on the Gary Development landfill site when the clay cover is wet.

66. Admit or deny that, in the absence of a traction aid, it would be difficult for refuse collection trucks to get to the working face area at the Gary Development landfill in wet weather due to the slippery nature of the clay.

67. Admit or deny that on June 27, 1978, the Gary Development landfill was inspected and not found to be unacceptable.

68. Admit or deny that daily cover is not required to be placed on refuse at a landfill until the end of a landfill's working day.

69. Admit or deny that fires have not been a problem at the Gary Development landfill.

70. Admit or deny that it is the belief of the staff of the Land Pollution Control Division that illegal activity relating to the disposal and handling of solid waste occur in Lake County during nighttime hours.

71. Admit or deny that Vulcan Materials stores large, uncovered piles of scrap iron, or metal material on its lot adjacent to the Gary Development landfill.

72. Admit or deny that rain water, which hits the scrap piles mentioned in the preceding request, eventually leaches into the ground.

73. Admit or deny that rain water, which hits the scrap piles at the Vulcan Materials site, would tend to pick up, or leach, the constitutents of the scrap iron.

74. Admit or deny that Gary Development is not on a closure or phase-out schedule.

75. Admit or deny that nowhere in 320 IAC 5 is the State granted specific permission to consider the fact that a site is in litigation with the State, in determining whether to issue a special permission letter to the site.

76. Admit or deny that, when the State is reviewing a request for a special permission letter, the

State usually does not receive a sample of the waste they are evaluating for disposal.

77. Admit or deny that the Gary Development landfill is the Indiana-permitted sanitary landfill located closest to the cities of

(a) Gary;

(b) East Chicago;

(c) Hammond;

(d) Whiting.

B. REQUEST FOR PRODUCTION

At the depositions of Bruce H. Palin, George E. Oliver, and Karyl Schmidt, the Respondent promised (with the exception of No. 8) to promptly produce the following items. Despite the passage of forty-two days, none of the promised information has been produced. Please produce the following items at the offices of Barnes & Thornburg, 1313 Merchants Bank Building, Indianapolis, Indiana.

1. Produce the inspection reports for the Samocki Brothers dump site other than those inspection reports dated January 9, 1980; August 14, 1980; April 21, 1981;

July 10, 1981; and January 8, 1982. (See the deposition of George Oliver at page 21.)

2. Produce the results of the tests conducted at the laboratories of the State Board of Health on foundry sand. (See the deposition of George Oliver at page 63.)

3. Produce all inspection reports of the Roland dump site prior to January 1980. (See the deposition of George Oliver at page 66.)

4. Produce the June 11, 1982 inspection report of the Roland (Lake County) dump site. (See the deposition of George Oliver at page 101.)

5. Produce a list of dumps or sites in the same general geologic setting as the Gary Development landfill in Lake County which are currently accepting hazardous wastes illegally.

6. Produce the correspondence, in the Board's file, from the Federal Avaiation Administration relating to the problems caused by the presence of birds at the Gary Development landfill. (See the deposition of George Oliver at page 141.)

7. Produce the documents relating to the delisting, from the RCRA list of hazardous wastes, of Central Waste Treatment Plant sludge. (See the deposition of George Oliver at page 145.)

8. Produce the evaluation chart, mentioned by George Oliver at page 159 of his deposition, which is

employed by the Land Pollution Control Division, and indicates those sites with a marginal operating history, etc., which is utilized by the Land Pollution Control Division to determine which sites can receive the special permission waste.

9. Produce a list of illegal dump sites against which the State took action in 1976. (See the deposition of Bruce Palin at page 71.)

10. Produce a list and narrative detailing the times when the State alleges that sand, shredder material, or "coal ash" was used in lieu of clay, and not in addition to clay, for cover at the Gary Development landfill site. (See the deposition of Bruce Palin at page 95.)

11. Produce a specific narrative regarding what must be done to comply with the fill sequence and progression of the Gary Development landfill and produce a list and narrative of that which Gary Development has failed to do to comply with the fill sequence and progression in the plans. (See the deposition of Bruce Palin at page 104.)

12. Produce any letters sent to the Blau Knox Foundy in Lake County, Indiana, by the staff of the Land Pollution Control Board or Environmental Management Board wherein the Board indicated to Blau Knox that their foundry sand could not be deposited at either the Roland or Samocki sites. (See the deposition of Bruce Palin at page 107.)

13. Produce a list of each time the Gary Development landfill has utilized fly ash in lieu of soil cover. (See the deposition of Bruce Palin at page 110.)

Respectfully submitted,

John M. Kyle III

E. Victor Indiano

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing "REQUESTS FOR ADMISSION AND REQUESTS FOR THE PRODUCTION OF DOCUMENTS" has been served on the Respondent this 1st day of December, 1982, by hand-delivering a copy thereof to:

Mathew S. Scherschel
Deputy Attorney General
Counsel for Environmental Management
Board of the State of Indiana
Room 219, State House
Indianapolis, Indiana 46204

John M. Kyle III

John M. Kyle III

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.

THE ENVIRONMENTAL MANAGEMENT BOARD OF THE STATE OF INDIANA,

Respondent.

CAUSE NO. IN-53

RECEIVED
OCT 29 1982
INDIANA STATE BOARD OF HEALTH
ASSISTANT COMMISSIONER FOR
ENVIRONMENTAL HEALTH

RESPONDENT'S FIRST SET OF INTERROGATORIES, REQUESTS FOR ADMISSIONS, AND REQUESTS FOR THE PRODUCTION OF DOCUMENTS

Pursuant to Rule 28(F) of the Indiana Rules of Trial Procedure, Respondent, the Environmental Management Board of the State of Indiana, hereby propounds the following interrogatories, requests for admissions, and request for production of documents on Petitioner. The obligations imposed upon Petitioner by Rules 26, 33, 34, 36, and 37 of the Indiana Rules of Trial Procedure are incorporated by reference herein. Respondent further requests that Petitioner respond to these interrogatories and requests for admissions, and produce the documents requested herein, on or before November 29, 1982. In answering the interrogatories and requests for admissions, please reproduce the interrogatory and request in full prior to responding. If you are unable to answer each interrogatory or request in full, answer to the extent possible and specify the reason for your inability to answer in full.

A. OWNERSHIP OF LANDFILL AND STATUS OF CORPORATION

1. The original application for a construction permit for the Petitioner's site indicates that Gary Land Development Company, Inc., was the owner.

(a) Discuss in detail the relationship between said company and Gary Development, Inc. (hereafter referred to as "Petitioner").

(b) Identify the title holder for the real property for the subject landfill site. Describe in detail Petitioner's relationship to the title holder.

(c) Is Petitioner a corporation currently in good standing with the State of Indiana and supply a certificate stating such from the Secretary of State.

(d) List all corporate officers for Gary Development, Inc., including title, name, and address.

(e) Discuss in detail Larry Hagen's authorities, duties and responsibilities for the Petitioner.

(f) Produce all documents relating to your responses to the questions and requests for admissions contained in Interrogatory 1 and all subparts hereto.

B. DAILY OPERATION OF LANDFILL

2. According to the construction plans the Petitioner's landfill operating hours, during which refuse is accepted for disposal, are from 7:00 a.m. to 4:00 p.m., Monday through Friday, and 7:00 a.m. to 11:00 a.m. on Saturday.

(a) Admit or deny that these are the actual hours of operation. If the response is one of denial list the actual operating hours.

(b) Admit or deny that Mr. Hagen is on-site during the outlined operating hours.

(c) If the response to Interrogatory 2 (b) is one of denial give the name, address and phone number of the person responsible for the operation of the site during Mr. Hagen's absence.

(d) Admit or deny that waste is disposed of at the site after the designated operating hours.

(e) If the answer to Interrogatory 2 (c) is admit, discuss those situations that result in after hour disposal and include a description of the waste and its quantity, the name of the waste generator, and the name of the hauler of the waste.

(f) Admit or deny that Mr. Hagen, or his designee, inspects the landfill at the end of each operating day to determine that all refuse has been covered with a minimum of six inches of cover soil.

(g) Admit or deny that all solid waste is covered with a minimum of six inches of soil at the end of each operating day.

(h) Admit or deny that fly ash or shredder material has been used in lieu of daily soil cover.

(i) If your response to any of the above requests for admissions is one of denial, explain in detail the reason for your denial.

(j) Is there a security guard present on-site after operating hours? If so, what is his name, address, and telephone number.

(k) Is a daily operational log or record kept on any of the following:

(i) Amount of refuse accepted for disposal.

(ii) Results of inspections of the facility by the operator.

(iii) Equipment utilized on-site.

(iv) Equipment breakdowns.

(v) Weather conditions.

(vi) Rental of back-up equipment.

(vii) Construction activities

(1) If the answer to Interrogatory 2 (j) is one of admission produce a copy of the log or record.

3. Admit or deny that the following inspection reports were signed by an authorized representative of Gary Development, Inc.

(1) June 19, 1980
(2) July 25, 1980
(3) September 9, 1980
(4) November 14, 1980
(5) January 8, 1981
(6) April 21, 1981
(7) August 20, 1981
(8) October 20, 1981
(9) January 8, 1982
(10) August 10, 1982

C. CONSTRUCTION PLANS

4. In reference to the approved 1973 construction plans for the landfill site:

(a) Admit or deny that the external dewatering system has not been constructed around the entire site.

(b) Admit or deny that a flow meter was not provided on the discharge to the Grand Calumet River.

(c) Admit or deny that a water quality monitoring program was not established for the discharge to the Grand Calumet River.

(d) Admit or deny that a clay wall has not been constructed around the entire site.

(e) Admit or deny that a leachate collection system as illustrated in Exhibit No. 1 of the plans has not been constructed under the eastern portion of the site that has been filled.

(f) Admit or deny that leachate collected on-site has not been taken to a wastewater treatment plant.

(g) Admit or deny that a gas venting system has not been installed on-site.

(h) If your response to any of the above requests for admission is one of denial, explain in detail the reason for your denial.

(i) Produce all documents relating to your responses to the questions and requests for admissions contained in Interrogatory 3 and all subparts hereto.

5. The 1980 proposal to amend the Construction Plan outlines how future site construction will be conducted in a manner different from the previously mentioned 1973 construction plan. Relative to the plan:

(a) Admit or deny that Petitioner reviewed the plan and submitted the amendment application form.

(b) The construction techniques for the berm along the west side of the site was detailed in the amendment plan. Relative to the berm which has been constructed along the west side of the site:

(i) Admit or deny that the berm is keyed into the clay in the pit bottom.

(ii) Admit or deny that the berm was constructed by placing native clay soils in maximum 12 inch layers and compacting.

(iii) Admit or deny that the berm is a minimum of 25 feet thick in the horizontal plane from top to bottom.

(iv) Admit or deny that the berm was compacted at optimum moisture content to a ninety percent maximum density as determined by the Standard Proctor Test. If your answer is one of admission provide copies of results of soil tests.

(c) Admit or deny that the Petitioner was aware of groundwater or fluids flowing into the site along the west side of the pit prior to the proposal to amend the Construction Plans.

(d) If your response to any of the above requests for admissions is one of denial, explain in detail the reason for your denial and give a detailed explanation of how the berm was constructed if different from the method described in the amendment plans.

(e) What size and type of equipment was utilized to construct the berm?

(f) Give the names, addresses, and phone numbers of the equipment operators who constructed the berm.

6. Was any registered engineer on site during construction of the berm along the west wall to observe, review or critique said construction? If the answer is no, who was responsible for assuring the berm was constructed according to the proposed plans to amend the construction permit.

D. HAZARDOUS AND SPECIAL WASTE

7. List the following information for each RCRA hazardous waste disposed of at the Petitioner's landfill since November 19, 1980 and provide a copy of the manifest form which accompanied each waste.

(a) Name or type of each specific waste and EPA Hazardous Waste Number.

(b) Generator's name and address.

(c) Name and address of hauler that transported the waste.

(d) Total quantity received to date.

(e) Copies of lab analysis of material.

(f) Date the last load of waste was received.

8. Admit or deny that waste from Jones and Laughlin Steel's 6-stand oil recovery unit has been disposed of at the Petitioner's landfill.

9. If the answer to Interrogatory 8 is one of admission, describe the physical characteristics of the waste delivered to the site.

10. List the following information for each special waste which is a hazardous waste under the landfill regulation definition (320 IAC 5), but not a RCRA hazardous waste, which have been disposed of at the Petitioner's landfill since June 1, 1980:

(a) Name or type of waste.

(b) Generator's name and address.

(c) Name and address of hauler that transported waste.

(d) Total quantity received to date.

(e) Copies of lab analysis of waste.

(f) Date the last load of waste was received.

11. Has the following ever been disposed of at the site by dumping into pits excavated into previously filled areas of the landfill?

(a) RCRA hazardous waste

(b) Special waste

12. If the answer to Interrogatory 11 is yes, list those wastes which have been handled in the described manner and indicate the maximum amount of time that passed before the pit was filled in with refuse and covered.

13. Admit or deny that RCRA hazardous wastes or special wastes have been disposed of at the Petitioner's site after operating hours established by the answer to Interrogatory B 2(a).

E. MISCELLANEOUS

14. Were the monitoring wells on-site sampled during April of 1982? Is yes, produce a copy of the test results.

15. List the educational background for Larry Hagen including the degree or certificate conferred, the school from which the degree or certificate was conferred, and the date of conferral.

16. List Larry Hagen's work experience prior to working for Gary Development, Inc. relative to the operation of solid waste disposal facilities.

17. Does the Petitioner or Larry Hagen own or operate any other landfill sites or solid waste related facilities? If yes, list the name, address, and nature of business of the sites or facilities.

18. Does the Petitioner provide, or if not, send its employees to, a training program of any kind, formal or informal, on operating a landfill?

(a) If so, discuss in detail the nature of such programs; and produce documentation that the current employees have completed such training.

Respectfully submitted,
Linley E. Pearson,
Attorney General
State of Indiana

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

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing, "Respondent's Answers to Petitioner's First Set of Interrogatories, Requests for Admissions and Requests for the Production of Documents," has been duly served upon all counsel of record listed below, by United States Mail, First Class, postage prepaid, this 27th day of September, 1982.

John M. Kyle III
BARNES & THORNBURG
1313 Merchants Bank Building
Indianapolis, Indiana 46204

Vic Indiano
BARNES & THORNBURG
1313 Merchants Bank Building
Indianapolis, Indiana 46204

Mathew S. Scherschel
Deputy Attorney General

Office of the Attorney General
219 State House
Indianapolis, Indiana 46204
Telephone: 317/232-6304

STATE OF INDIANA

ENVIRONMENTAL MANAGEMENT BOARD

INDIANAPOLIS, 46206

1330 West Michigan Street
P.O. Box 1964

VIA CERTIFIED MAIL

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

BEFORE THE ENVIRONMENTAL MANAGEMENT BOARD OF THE STATE OF INDIANA

IN THE MATTER OF)
GARY DEVELOPMENT, INC.)
)
vs.)
)
THE ENVIRONMENTAL MANAGEMENT)
BOARD OF THE STATE OF INDIANA)

CAUSE NO. N-53

ORDER

TO: Mr. John M. Kyle, III
Barnes & Thornburg
1313 Merchants Bank Building
Indianapolis, IN 46204

Mr. Mathew Scherschel
Deputy Attorney General
Room 219, State House
Indianapolis, IN 46204

Comes now the Respondent, by Counsel, and files its Motion for Continuance, in the following words and figures, to wit:

(H.I.)

and comes now the Petitioner, by Counsel, and files its Response to Respondents Motion for Continuance, in the following words and figures, to wit:

(H.I.)

and the Hearing Officer, being duly advised in the premise, now finds that Respondent's motion should be granted.

IT IS THEREFORE ORDERED that the Respondent herein file all contemplated discovery herein on or before November 3, 1982, and that the Petitioner herein is ordered to respond to any such discovery so filed, on or before November 23, 1982.

IT IS FURTHER ORDERED that the Hearing herein be reset for the 14th day of December, 1982. In the event that the parties are able to agree on a prior date for said hearing, and in the event the Hearing Officer is available on such date, said hearing may be reset by order of the Hearing Officer.

Dated at Indianapolis, Indiana, this 19 day of October, 1982.

James M. Garrettson, Hearing Officer

File

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

BEFORE THE ENVIRONMENTAL MANAGEMENT BOARD OF THE STATE OF INDIANA

RECEIVED
OCT 20 1982
INDIANA STATE BOARD OF HEALTH
ASSISTANT COMMISSIONER FOR
ENVIRONMENTAL HEALTH

IN THE MATTER OF:

GARY DEVELOPMENT, INC.,

Petitioner,

v.

THE ENVIRONMENTAL MANAGEMENT BOARD OF THE STATE OF INDIANA,

Respondent.

CAUSE NO. N-53

MOTION FOR CONTINUANCE

Comes now Respondent, Environmental Management Board of the State of Indiana, and moves for a continuance of the hearing herein, set for October 26, 1982. As reason for this Motion, Respondent states:

1. Except for a change of date for the hearing herein, from October 25, 1982 to October 26, 1982, this Motion is the first request for a continuance made by Respondent herein.

2. Negotiations toward settlement have been occurring during the past few weeks, which negotiations have brought forth further evidence and circumstances relating to the case such that additional time is required by Respondent in order to determine the most appropriate defense of this action.

In order to better determine the most appropriate defense, Respondent requires additional time for Interrogatories, which Interrogatories would be delivered on late October 23, 1982, with a request for expedited reply, that reply being requested on or before November 10, 1982. A hearing herein is then requested for November 18 or November 19, 1982; this being

a delay of only three and one-half weeks.

3. Due to the Respondent's witnesses having to be involved in the preparation for, and testify at the Court action in Lake Circuit Court with Cause No. C77-2270, Stream Pollution Control Board v. City of Gary, in which a Contempt Hearing is scheduled for October 25, 1982, as well as Respondent's attorney being required to be out of state on Thursday, October 21, 1982, and represent the Indiana Department of Natural Resources on October 22, 1982 in the Greene Circuit Court with Cause No. C-82-355, Nancy Coal Company, Inc. v. Indiana Department of Natural Resources, inadequate time exists for Respondents witnesses to be adequately prepared to testify on October 26, 1982.

WHEREFORE, Respondent prays that the Hearing Officer grant this Motion for Continuance and reset the hearing date herein for November 18 or 19, 1982.

Respectfully submitted,

LINLEY E. PEARSON
Attorney General of Indiana

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

Office of the Attorney General
219 State House
Indianapolis, IN 46204
Telephone: (317) 232-6304

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing MOTION FOR CONTINUANCE was deposited in the U.S. Mail, first class, postage prepaid, on this 20th day of October, 1982, addressed to:

Mr. John Kyle
BARNES & THORNBURG
1313 Merchants Bank Bldg.
Indianapolis, IN 46204

Mathew S. Scherschel
Mathew S. Scherschel
Deputy Attorney General

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.

THE ENVIRONMENTAL MANAGEMENT BOARD OF THE STATE OF INDIANA,

Respondent.

CAUSE NO. N-53

RECEIVED
AUG 25 1982
INDIANA STATE BOARD OF HEALTH
ASSISTANT COMMISSIONER FOR
ENVIRONMENTAL HEALTH

ORDER FOR CONTINUANCE

Comes now GARY DEVELOPMENT, INC., by counsel, and files its Motion to Reduce Time for Respondent to Reply to Petitioner's First Set of Interrogatories, Requests for Admissions, and Requests for Production of Documents, or in the Alternative, Motion for Continuance, in the following words and figures, to-wit:

[H.I.];

And the Hearing Officer being duly advised finds that Petitioner's Motion is meritorious and that a continuance should be granted.

And the Hearing Officer being duly advised, HEREBY ORDERS THAT the hearing currently set for September 22, 1982 at 9:30 a.m. is hereby continued. This matter is reset for a hearing on all pending matters for the 25 day of October, 1982, at 9:30 o'clock A.m.

James Garrettson, Hearing Officer

Notice to:

Mathew S. Scherschel
Deputy Attorney General
Counsel for Environmental Management Board of the State of Indiana
Room 219, State House
Indianapolis, Indiana 46204

John M. Kyle III, Esquire
Barnes & Thornburg
1313 Merchants Bank Building
Indianapolis, Indiana 46204
Telephone: (317) 638-1313

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.

THE ENVIRONMENTAL MANAGEMENT BOARD OF THE STATE OF INDIANA,

Respondent.

CAUSE NO. N-53

RECEIVED
AUG 25 1982
INDIANA STATE BOARD OF HEALTH
ASSISTANT COMMISSIONER FOR
ENVIRONMENTAL HEALTH

ORDER REDUCING TIME FOR RESPONDENT TO REPLY TO PETITIONER'S FIRST SET OF INTERROGATORIES, REQUESTS FOR ADMISSIONS, AND REQUESTS FOR PRODUCTION OF DOCUMENTS

Comes now GARY DEVELOPMENT, INC., by counsel, and files its Motion to Reduce Time for Respondent to Reply to Petitioner's First Set of Interrogatories, Requests for Admissions, and Requests for Production of Documents, or in the Alternative, Motion for Continuance, in the following words and figures, to-wit:

[H.I.];

And the Hearing Officer being duly advised hereby finds that said Motion is meritorious and that the time in which Respondent should be allowed to reply to Petitioner's First Set of Interrogatories, Requests for Admissions, and Requests for Production of Documents, should be shortened.

And the Hearing Officer being duly advised, IT IS HEREBY ORDERED that Respondent shall deliver its responses to Petitioner's First Set of Interrogatories, Requests for Admissions, and Request for Production of

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.

THE ENVIRONMENTAL MANAGEMENT BOARD OF THE STATE OF INDIANA,

Respondent.

CAUSE NO. N-53

RECEIVED
AUG 25 1982
INDIANA STATE BOARD OF HEALTH
ASSISTANT COMMISSIONER FOR
ENVIRONMENTAL HEALTH

ORDER REDUCING TIME FOR RESPONDENT TO REPLY TO PETITIONER'S FIRST SET OF INTERROGATORIES, REQUESTS FOR ADMISSIONS, AND REQUESTS FOR PRODUCTION OF DOCUMENTS

Comes now GARY DEVELOPMENT, INC., by counsel, and files its Motion to Reduce Time for Respondent to Reply to Petitioner's First Set of Interrogatories, Requests for Admissions, and Requests for Production of Documents, or in the Alternative, Motion for Continuance, in the following words and figures, to-wit:

[H.I.];

And the Hearing Officer being duly advised hereby finds that said Motion is meritorious and that the time in which Respondent should be allowed to reply to Petitioner's First Set of Interrogatories, Requests for Admissions, and Requests for Production of Documents, should be shortened.

And the Hearing Officer being duly advised, IT IS HEREBY ORDERED that Respondent shall deliver its responses to Petitioner's First Set of Interrogatories, Requests for Admissions, and Request for Production of

Documents to Petitioner's counsel no later than Tuesday, September 7, 1982.

IT IS ALSO ORDERED that any requests for admissions which are not admitted or denied by said date shall be deemed admitted.

IT IS FINALLY ORDERED that Respondent shall file its response to Petitioner's First Set of Interrogatories, Requests for Admissions, and Request for the Production of Documents with this Hearing Officer on or before September 7, 1982.

James Garrettson
Hearing Officer

Notice to:

Mathew S. Scherschel
Deputy Attorney General
Counsel for Environmental
Management Board of the
State of Indiana
Room 219, State House
Indianapolis, Indiana 46204

John M. Kyle III, Esquire
Barnes & Thornburg
1313 Merchants Bank Building
Indianapolis, Indiana 46204
Telephone: (317) 638-1313

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.

THE ENVIRONMENTAL MANAGEMENT BOARD OF THE STATE OF INDIANA,

Respondent.

CAUSE NO. N-53

RECEIVED
AUG 25 1982
INDIANA STATE BOARD OF HEALTH
ASSISTANT COMMISSIONER FOR
ENVIRONMENTAL HEALTH

MOTION TO REDUCE TIME FOR RESPONDENT TO REPLY TO PETITIONER'S FIRST SET OF INTERROGATORIES, REQUESTS FOR ADMISSIONS, AND REQUESTS FOR PRODUCTION OF DOCUMENTS, OR IN THE ALTERNATIVE, MOTION FOR CONTINUANCE

Comes now GARY DEVELOPMENT, INC., by counsel, pursuant to Rules 33(A), 34(B), and 36(A) of the Indiana Rules of Trial Procedure, and requests that the Hearing Officer shorten the time required for Respondent to reply to Petitioner's Interrogatories, Requests For Admissions, and Requests for the Production of Documents filed this same day, or in the alternative, that the hearing currently set for September 22, 1982 be continued. In support of this Motion, Petitioner states:

1. This matter is set for an adjudicatory hearing on September 22, 1982 at 9:30.

2. On July 8, 1982 the undersigned contacted Mr. Mathew Scherschel, attorney for Respondent, and requested that Mr. Scherschel forward a revised, current copy of the proposed Stipulations Between the Parties as well as a statement detailing the reasons why the staff of the Indiana State Board of Health, Land Pollution Control Division, had refused to grant Petitioner the ability to continue receiving hazardous wastes. Mr. Scherschel promised to send the requested information as

soon as possible. This request was confirmed and reiterated in a letter to Mr. Scherschel dated July 13, 1982.

3. On or about August 3, 1982, the undersigned again telephoned Mr. Scherschel, explained that the requested information had not been received, and informed Mr. Scherschel that Petitioner planned to file interrogatories, requests for admissions, and requests for production of documents on Respondent; that the undersigned would be out of the state on vacation and business from Saturday, August 7, 1982 until Monday, August 23, 1982 except for a brief period on Wednesday, August 18th; that it would be necessary to receive the requested information prior to serving Petitioner's discovery requests; that Petitioner planned to follow the written discovery requests with oral depositions of certain State Board of Health employees; that the depositions would have to be held no later than the week of September 6, 1982, to be able to receive and analyze the deposition transcripts well in advance of September 22nd; that it would be necessary to have received and analyzed the State's response to Petitioner's discovery requests prior to taking depositions; and that to give the State adequate time to respond to the discovery requests, it would be necessary to serve the discovery on the State prior to the undersigned's departure on Saturday, August 7th. Mr. Scherschel indicated that he had been very busy, but would do his best to get the requested information to the undersigned on Thursday or Friday, August 5th or 6th. The information did not come.

4. On Tuesday, August 10th, Mr. Vic Indiano, another one of Petitioner's counsel, contacted Mr. Scherschel to ascertain whether the requested information was available. Mr. Scherschel said he would send the information in a couple of days.

5. On Monday, August 16, 1982, the information still had not arrived. Mr. Indiano again called Mr. Scherschel, who said that the information was completed. Mr. Indiano traversed to the State Office Building to personally pick up the information that same day.

6. The undersigned has finally been able to analyze the State's responses on August 23rd and August 24th, and has this same day filed Petitioner's First Set of Interrogatories, Requests for Admissions, and Requests for the Production of Documents.

7. Because the planned depositions must be held no later than the week of September 6th, and because the answers to Petitioner's discovery requests are needed prior to holding these depositions, it will be necessary to receive the State's responses no later than Tuesday, September 7th.

8. Petitioner realizes this time frame may make it difficult for the State to adequately respond. If this is the case, Petitioner respectfully requests that the September 22, 1982 hearing be continued for approximately thirty (30) days. Petitioner feels that such a continuance would be desirable under the circumstances; this is not an emergency hearing or an enforcement action, no prejudice would occur to any party, and the Hearing Officer would be presented with a more complete factual record than if the hearing is held September 22nd.

9. Petitioner acknowledges that the unfortunate delay is not anyone's fault, but rather the result of Mr. Scherschel's busy schedule and the vacation plans of many persons involved in this case. Nevertheless, Petitioner plans to fully pursue its discovery rights pursuant to Rule 28(F) of the Indiana Rules of Trial Procedure (applicable to adjudicatory hearings

before administrative agencies) and to be fully prepared prior to the hearing.

WHEREFORE, Petitioner requests that the Hearing Officer shorten the time allowed for Respondent to reply to Petitioner's First Set of Interrogatories, Requests for Admissions, and Requests for the Production of Documents, and that this reply be delivered to Petitioner's counsel no later than September 7, 1982, or in the alternative, that the Hearing Officer continue the hearing currently set for September 22, 1982 at 9:30 a.m., and for all other necessary and appropriate relief in the circumstances.

BARNES & THORNBURG

By John M. Kyle III
John M. Kyle III

By _____
Vic Indiano

Counsel for Petitioner

Of Counsel:

BARNES & THORNBURG
1313 Merchants Bank Building
Indianapolis, Indiara 46204
Telephone: (317) 638-1313

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing "Motion To Reduce Time For Respondent To Reply To Petitioner's First Set Of Interrogatories, Requests For Admissions, And Requests For Production Of Documents, Or In The Alternative, Motion For Continuance" has been served on the Respondent by depositing a copy thereof in the United States First Class Mail, addressed to:

Mathew S. Scherschel, Deputy Attorney General
Counsel for Environmental Management Board of
the State of Indiana
Room 219, State House
Indianapolis, Indiana 46204;

and by hand delivery a copy to Ms. Brenda Rodeheffer, counsel for Respondent.

This 25th day of August, 1982.

John M. Kyle III

John M. Kyle III

BARNES & THORNBURG

1313 MERCHANTS BANK BUILDING
INDIANAPOLIS, INDIANA 46204

TELEPHONE (317) 638-1313

TELECOPIER (317) 261-9433

SIXTH FLOOR, 1ST SOURCE BANK BUILDING
SOUTH BEND, INDIANA 46601
(219) 233-1171

FIRST NATIONAL BANK BUILDING
301 SOUTH MAIN STREET, SUITE 305
ELKHART, INDIANA 46516
(219) 293-0681

SUITE 200
2000 L STREET, N.W.
WASHINGTON, D.C. 20036
(202) 296-2630

JERRY P. BELKNAP
ROBERT S. ASHBY
LOUIS A. HIGHMARK
JOHN W. HOUGHTON
WARREN E. McGILL
WARREN A. DEAHL
JOHN L. CAREY
GEORGE J. ZAZAS
THOMAS L. MURRAY
JOHN R. HARMAN
HOWARD J. COFIELD
RICHARD M. TRECKELO
EUGENE C. MILLER, JR.
WILLIAM J. REINKE
RICHARD E. DEER
EDWARD J. GRAY
ROBERT E. HIGHFIELD
DANIEL W. RUDY
JACK C. DUNFEE, JR.
HENRY J. PRICE
HERBERT C. SNYDER, JR.
JAMES A. McDERMOTT
SHIRLEY A. SHIDELER
ROBERT J. REYNOLDS
CHARLES E. DRUESS
WILLIAM R. COFFEY
BRUCE R. BANCROFT
JOHN T. MULVIHILL
FRANKLIN A. MORSE II
STEPHEN A. SEALL
GORDON S. ESLICK
RICHARD E. STEINBRONN
JOHN F. BURGESS
H. KENT HOWARD
ROBERT P. JOHNSTONE
TOM CHARLES HUSTON
JAMES A. STRAIN
GEORGE H. BAKER
TONI SUE AX
R. MICHAEL PARKER
NELSON J. VOGEL, JR.
ROGER W. BENKO
DAVID R. MELTON
BRIAN J. LAKE
BRYAN G. TABLER
DANIEL H. FITZGIBBON
STEPHEN K. SMITH
RICHARD W. MORGAN
MICHAEL R. FRUEHWALD
EDWARD O. DELANEY
CYN H. LOWELL
SAMUEL S. THOMPSON
BRUCE R. KARR
DONALD E. KNEBEL
WAYNE C. KREUSCHER
KRISTIN G. FRUEHWALD
DANIEL W. McGILL
KENT E. AGNESS
MICHAEL R. CONNER
CLAUDIA V. SWHIER
ROBERT K. BELLAMY
CATHERINE L. BRIDGE
RICHARD D. CONARD

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ALAN W. BOYD
CHARLES H. WELLS
THOMAS M. SCANLON
JAMES F. THORNBURG
FREDERIC D. ANDERSON
LESTER IRONS
LESTER M. PUNDER
DONALD D. EVENSON *
THOMAS P. JENKINS
EVERETT F. BRIGHTA
JERRY E. HYLAND
DAVID H. BAUDER
LARRY J. STROBLE
MICHAEL ROSIELLO
LYNN BRUNDAGE
STEPHEN W. LEE
DAVID A. HAIST
WILLIAM I. KOHN *
A. JAMES RICHARDSON
ERNEST J. SZARWARK
PAUL E. BECHER
JAMES E. MAHONEY
DAVID M. POWLEN
EDWIN B. WAINSCOTT
MICHAEL P. LUCAS
DAVID L. SWIDER
RENEE R. MAWHINNEY
JOHN P. GREELEY
MARCUS B. CHANDLER
DAVID F. SNIVELY
JOHN J. KISH
DOUGLAS P. LONG
M. RICKLIFFE CHONTE II
STEPHEN L. SMITH
JOHN M. KYLE III
JAMES A. COLES
MILDRED L. CALHOUN
DOUGLAS K. DISTERLY
SANDRA J. LONG
DOUGLAS E. STARKEY
ROBERT J. SMITH, JR.
CONNIE M. McKEAN
SANDRA L. HEEKE
BRUCE B. HARR
JEFFREY J. TONNER
GREGORY L. KELLY
PATRICK J. O'NEIL
MARK R. WENZEL
JAMES B. LOOTENS
NANCY L. MARSHALL
ANNE N. DEPREZ
RICHARD A. COHEN

*NOT ADMITTED IN INDIANA

TO CALL WRITER DIRECT

317-261-9294

13 July 1982

James M. Garrettson, Hearing Officer
Environmental Management Board
1330 West Michigan Street
Indianapolis, Indiana 46206

Re: Gary Development, Inc. v. The Environmental Management Board of the State of Indiana, Cause No. N-53

Dear Mr. Garrettson:

Please file the enclosed Motion For Continuance in the above case and return a file-stamped copy to me in the enclosed self addressed, stamped envelope.

I have also enclosed a proposed Order in the above case.

Very truly yours,

John M. Kyle III

John M. Kyle III

JMKIII/se
Enclosures

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,

vs.

THE ENVIRONMENTAL MANAGEMENT BOARD OF THE STATE OF INDIANA,

Respondent.

CAUSE NO. N-53

JUL 14 3 PM '82

MOTION FOR CONTINUANCE

Comes now the Petitioner, Gary Development Company, Inc., by counsel, John M. Kyle III, and states as follows:

1. This matter has been set for a hearing to be held July 27, 1982.

2. The firm of Barnes & Thornburg was just recently contacted by Petitioner to represent it in this matter.

3. Petitioner's counsel will not have a sufficient opportunity to review the facts prior to July 27, 1982, and therefore request a continuance of that hearing.

4. Petitioner's counsel have discussed continuing the July 27th hearing with Mathew S. Scherschel, Deputy Attorney General, who has no objection to this motion.

5. Petitioner's counsel further show the Hearing Officer that the parties have agreed to set this matter for hearing on all pending matters September 22, 1982.

WHEREFORE, Petitioner, by counsel, requests that the Hearing Officer continue the hearing currently scheduled for July 27, 1982; that this matter be reset for hearing on September 22, 1982, and for all other appropriate relief.

John M. Kyle III
Attorney for Gary Development Company, Inc.

Of Counsel:

BARNES & THORNBURG
1313 Merchants Bank Building
Indianapolis, Indiana 46204
Telephone: (317) 638-1313

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing "Motion For Continuance" has been served on the other party to this action by depositing a copy thereof in the United States First Class Mail, addressed to:

Mathew S. Scherschel, Deputy Attorney General
Counsel for Environmental Management Board of the State of Indiana
Room 219, State House
Indianapolis, Indiana 46204,

this 13th day of July, 1982.

John M. Kyle III

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

ORDER REDUCING TIME FOR RESPONDENT TO REPLY TO PETITIONER'S FIRST SET OF INTERROGATORIES, REQUESTS FOR ADMISSIONS, AND REQUESTS FOR PRODUCTION OF DOCUMENTS

Comes now GARY DEVELOPMENT, INC., by counsel, and files its Motion to Reduce Time for Respondent to Reply to Petitioner's First Set of Interrogatories, Requests for Admissions, and Requests for Production of Documents, or in the Alternative, Motion for Continuance, in the following words and figures, to-wit:

[H.I.];

And the Hearing Officer being duly advised hereby finds that said Motion is meritorious and that the time in which Respondent should be allowed to reply to Petitioner's First Set of Interrogatories, Requests for Admissions, and Requests for Production of Documents, should be shortened.

And the Hearing Officer being duly advised, IT IS HEREBY ORDERED that Respondent shall deliver its responses to Petitioner's First Set of Interrogatories, Requests for Admissions, and Request for Production of

Documents to Petitioner's counsel no later than Tuesday, September 7, 1982.

IT IS ALSO ORDERED that any requests for admissions which are not admitted or denied by said date shall be deemed admitted.

IT IS FINALLY ORDERED that Respondent shall file its response to Petitioner's First Set of Interrogatories, Requests for Admissions, and Request for the Production of Documents with this Hearing Officer on or before September 7, 1982.

James Garrettson
Hearing Officer

Notice to:

Mathew S. Scherschel
Deputy Attorney General
Counsel for Environmental
Management Board of the
State of Indiana
Room 219, State House
Indianapolis, Indiana 46204

John M. Kyle III, Esquire
Barnes & Thornburg
1313 Merchants Bank Building
Indianapolis, Indiana 46204
Telephone: (317) 638-1313

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.

THE ENVIRONMENTAL MANAGEMENT BOARD OF THE STATE OF INDIANA,

Respondent.

CAUSE NO. N-53

RECEIVED
AUG 25 1982
INDIANA STATE BOARD OF HEALTH
ASSISTANT COMMISSIONER FOR
ENVIRONMENTAL HEALTH

PETITIONER'S FIRST SET OF INTERROGATORIES, REQUESTS FOR ADMISSIONS, AND REQUESTS FOR THE PRODUCTION OF DOCUMENTS

Pursuant to Rule 28(F) of the Indiana Rules of Trial Procedure, Petitioner, GARY DEVELOPMENT, INC., hereby propounds the following interrogatories, requests for admissions, and request for production of documents on Respondent. The obligations imposed upon Respondent by Rules 26, 33, 34, 36 and 37 of the Indiana Rules of Trial Procedure are incorporated by reference herein. Petitioner further requests that Respondent respond to these interrogatories and requests for admissions, and produce the documents requested herein, on or before September 7, 1982 for the reasons set forth in Petitioner's Motion to Shorten Time for Respondent to Reply to Petitioner's Interrogatories, Requests for Admissions, and Requests for Production of Documents, or in the Alternative, Motion for Continuance filed this same day. In answering the interrogatories and requests for admissions, please reproduce the interrogatory and request in full prior to responding. If you are unable to answer each interrogatory or request in full, answer to the extent possible and specify the reason for your inability to answer in full.

A. THE TYPE OF WASTE INVOLVED:

1. Admit or deny that the staff of the Indiana Environmental Management Board (hereafter referred to as "Respondent"

or "the State") has refused to grant Petitioner permission to continue accepting "hazardous wastes" as defined in 320 IAC 5-2-1 (1982 Cum. Supp.) (these wastes as so defined are hereafter referred to as "industrial wastes") at the Gary Development landfill ("GDL").

(a) Admit or deny that the term industrial wastes covers a much broader range of wastes than is covered by the definition and listing of "hazardous wastes" contained in 320 IAC 4-3 (1982 Cum. Supp.: all citations to 320 IAC used hereafter refer to the current, 1982 Cumulative Supplement, unless specifically noted otherwise).

(b) Admit or deny that the wastes covered by 320 IAC 4-3 (hereafter: "RCRA hazardous wastes") are the wastes covered by the federally-inspired hazardous waste management program pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. 6901, et seq.

(c) Admit or deny that many industrial wastes do not possess the same pernicious (as used herein, the term "pernicious" means "injurious or destructive to human health or the environment") characteristics as RCRA hazardous wastes.

(d) Admit or deny that many industrial wastes do not possess the same degree of pernicious characteristics as RCRA hazardous wastes.

(e) Admit or deny that RCRA hazardous wastes are a subset of industrial wastes.

(f) Admit or deny that the category of industrial wastes which are not also classified as RCRA hazardous wastes are, generally speaking, less pernicious than RCRA hazardous wastes.

(g) Admit or deny that the category of industrial wastes which are not also classified as RCRA hazardous wastes do not, generally speaking, possess the same hazardous or pernicious characteristics as recrewaste, but rather, includes all industrial wastes which possess "inherent dangers."

(h) If your response to any of the above requests for admissions is one of denial, explain in detail the reason for your denial including examples of the wastes which do not meet the above categorizations, and discuss the characteristics of each such waste.

(i) Produce all documents relating to your responses to the questions and requests for admissions contained in Interrogatory 1 and all subparts hereto.

B. THE STATE'S REASONS FOR DENYING GDL CONTINUED AUTHORITY TO ACCEPT INDUSTRIAL WASTES:

2. In Mathew Scherschel's, attorney for Respondent, letter to John M. Kyle III dated August 3, 1982, Mr. Scherschel said that one of the reasons GDL had been denied permission to continue accepting industrial wastes was:

> The geologic setting of Petitioner's site is marginal. Therefore, the site construction techniques are very important, and were to "make up for" that marginal geologic setting. The site construction by Petitioner has been poor, as shown by noncompliance with the approved construction plans. Because of the techniques used, there is no "back up" for existing geology.

(a) Discuss all reasons for classifying the GDL site as geologically "marginal."

(b) Admit or deny that numerous landfills exist in this same general geologic setting and that such landfills legally and illegally accept industrial wastes.

(c) List all such landfills and their addresses referred to in your response to subparagraph (b) above; list all industrial wastes which the State has allowed, pursuant to 320 IAC 5-5-14, to be disposed of at such landfills; categorize each waste listed as either industrial or RCRA hazardous waste (as defined above) or both; describe each waste's hazardous characteristics; and discuss the current State action to limit or eliminate disposal of such waste in said landfills.

(d) Isn't true that certain construction techniques or other measures can be undertaken to compensate for marginal geology? Give examples of such construction techniques and measures and discuss in detail how these reasons would protect the environment and be incorporated at GDL.

(e) Discuss in detail all specific examples supporting the State's allegation that Petitioner had not complied with approved construction plans.

(f) Discuss at length the specific actions, techniques, or construction measures which you contend would render GDL a suitable site to dispose of industrial wastes, or at least some types of industrial wastes.

(g) Do you contend that GDL is unsuitable to accept any waste classified as "industrial." Discuss your response in detail.

(h) Produce all documents relating to your responses to Interrogatory 2 and all subparts thereto.

3. Mr. Scherschel's August 15th letter referred to in Interrogatory 2 above, gave the following additional reason for denying GDL the ability to receive industrial wastes:

> There have [sic: has] been an unacceptable daily operation on-site, thereby not providing a good site for secure disposal of the subject hazardous wastes. The unacceptable daily operations include the non-provision of sufficient daily cover, as well as the manner in which Petitioner has handled and compacted solid waste. The use of fly ashes cover is not acceptable due to the permiability [sic: permeability] of that material.

(a) Discuss in detail all specific examples, giving dates and times, of such alleged "unacceptable daily operation on-site."

(b) Discuss in detail the allegation that insufficient daily cover has been used, referring to the date and time that such insufficient cover allegedly occurred, refer to the specific inspection reports supporting such allegation, and

discuss expected adverse environmental impacts arising from such alleged practices.

(c) Discuss in detail the allegation that Petitioner has improperly handled and compacted solid waste, refer to the date and time of such alleged improper handling and compaction, refer to specific inspection reports supporting this allegation, and discuss the adverse environmental impacts arising from such alleged practices.

(d) Discuss in detail the allegation that Petitioner has utilized fly ash in lieu of other acceptable cover, refer to the date and time of such alleged practice, refer to the specific inspection reports supporting such allegation, and discuss the expected adverse environmental impacts arising from such alleged practices.

(e) Has fly ash or shredder material ever been used in lieu of other cover, or has it rather been used in addition thereto? Discuss your response in detail.

(f) Has the State ever granted GDL, verbally or in writing, permission to use fly ash or shredder material as top surfacing for cover and not in lieu of cover? Discuss your answer in detail.

(g) Defining "marker pile" as a compacted pile of refuse left overnight to serve as a guidepost for initiating the next day's dumping, does the State in fact permit this practice? If so, how large may such a marker pile be? Do any of the examples given of allegedly insufficient daily cover include, in whole or in part, uncovered marker piles? Discuss your response to this subpart in detail.

4. Discuss in detail any and all reasons not covered by the discussion in Interrogatories 2 and 3 above, leading to the State's refusal to grant GDL the continued ability to accept industrial wastes.

5. Produce all documents discussing or relating to your responses to Interrogatories 2 through 5 above.

C. INSPECTIONS:

6. We have in our possession copies of inspection reports performed by Indiana State Board of Health inspectors of GDL for the following dates: 1/8/82; 10/20/81; 8/20/81; 7/10/81; 4/21/81; 1/8/81; 11/14/80; 9/19/80; 7/25/80; 6/19/80; 10/30/79; 4/18/79; 11/30/78; 8/17/78; 6/20/78; 5/9/78; 4/7/78; 3/15/78; 10/20/77; 8/8/77; 5/26/77; 3/29/77; 1/20/77; 10/5/76; 8/10/76; 7/14/76; 5/26/76; 5/11/76; 4/5/76; 2/26/76; 2/11/76; 1/22/76; 12/2/75; 10/9/75; 6/4/75; 4/1/75; 1/30/75; 12/17/74; 1/4/74; and 10/5/73.

(a) Are these the only inspections conducted by the State?

(b) If other inspections have been conducted by the State, provide the dates of such inspections, the name of the Inspector(s), and produce copies of any inspection reports made pursuant to those inspections.

(c) To your knowledge, has anyone other than the State conducted inspections at GDL? If so, specify the date of such inspections, the name of the Inspector(s), and produce copies of any inspection reports made pursuant to those inspections.

7. Referring to the State's January 8, 1982 inspection report:

(a) Admit or deny that on January 8, 1982, George Oliver and Stu Miller inspected GDL and found the site acceptable;

(b) Admit or deny that daily cover operations, including spreading and compacting of such material, were not found unacceptable;

(c) State the adverse environmental impact(s), if any, which would result from the use of foundry sand as a cover material; and

(d) Admit or deny that no improper handling or disposal of hazardous waste was detected.

8. Referring to the State's October 20, 1981 inspection report:

(a) Admit or deny that on October 20, 1981, George Oliver and Bill Morgan inspected GDL and found the site acceptable;

(b) Admit or deny that George Oliver and Bill Morgan found:

(i) that the daily operation at GDL showed "much improvement;"

(ii) that the refuse was compacted;

(iii) that the working face was in a small area; and

(iv) that there were no violations of applicable state regulations noted. [Answer each subpart separately.]

9. Referring to the State's inspection report of August 20, 1981:

(a) Explain the significance of the notation that "The J & L Steel Manifest # 7302-12750 - Tar Decanter Sludge and #7302-12685 - Central Waste Treatment Plant Sludge were received at the site on 8/19/81," in the absence of any further notation that either substance was improperly disposed of by GDL.

(b) What methodology was used to determine that the "sludge observed" originated from the Central Waste Treatment Plant Sludge Manifest # 7302-12685 and was in fact received by GDL on August 19, 1981?

(c) At the time of this inspection, was GDL closed for business, or was it continuing to accept waste for that day?

(d) What methodology was used to correlate the size of the working face with the amount of refuse received by Gary

Development to lead the inspectors to conclude that daily cover was not being applied?

(e) How large was the large working face?

(f) What is the anticipated adverse environmental impact of employing fly ash for a cover material? Was fly ash used in lieu of, or in addition to, other acceptable cover material?

(g) Were the engineering drawings consulted at the time of the inspection and employed contemporaneously with the determination that the leachate collection system was not being constructed as per the drawings?

10. Regarding the statement in the State's August 20, 1981 report that "hazardous waste is not properly disposed of:"

(a) List the specific types of hazardous waste, and their hazardous properties, which were not properly disposed of.

(b) What was the improper manner in which any such waste was being disposed of?

(c) What quantity of such waste was being disposed of?

(d) What was the source of any such waste which was improperly disposed of?

(e) Were any such wastes subject to a letter issued by the State pursuant to 320 IAC 5-5-14 (hereafter: "Special Permission Letter")?

(f) Were any such wastes similar in nature to other wastes being taken to GDL pursuant to a Special Permission Letter?

(g) Explain in reasonable detail the adverse environmental impacts associated with the alleged improper disposal of such wastes.

11. Admit or deny that on July 10, 1981, George Oliver and Mary Roe inspected GDL and found the site's operation acceptable.

12. Referring to the July 10, 1981 inspection report:

(a) What environmental concerns were raised by GDL's acceptance of shredder material?

(b) What adverse environmental impacts were anticipated by GDL's acceptance of such shredder material?

13. Admit or deny that on April 21, 1981, George Oliver inspected GDL and found (a) site to be acceptable; (b) that the refuse was worked well; and (c) cover was applied? [Answer each subpart separately.]

14. Regarding the State's April 21, 1981 inspection report, what is the significance of the notation that Union Carbide coal ash/slag was coming to the landfill?

15. Referring to the State's January 8, 1981 inspection report:

(a) What is the anticipated adverse environmental impact of the end of the working face being a cliff?

(b) Are there any weather-related factors which could have resulted in the operator being unable to maintain a 3:1 slope?

16. Referring to the State's November 14, 1980 inspection report:

(a) What specific areas were observed which did not have daily cover?

(b) Which two edges approximately four feet high needed to be worked onto a 3:1 slope?

(c) What is the anticipated adverse environmental impact of the Gary Landfill accepting aluminum dross?

(d) Is aluminum dross an "industrial waste" or a "RCRA hazardous waste," or both? Please give citations of authority as to the categorization of aluminum dross, and the regulation supporting this classification.

(e) What was the source and quantity of the water and leachate which were observed seeping into the pit along the west boundary?

17. Referring to the State's September 19, 1980 inspection, admit or deny that George Oliver inspected GDL and found that the refuse was "compacted well."

18. Referring to the State's September 19, 1980 inspection, what criteria was employed by the Inspector to determine that daily cover had not been applied for two or three days?

19. Admit or deny that on July 25, 1980, George Oliver inspected GDL and found the site was: (a) acceptable and the operation satisfactory; and (b) that the refuse was compacted well and a cover applied. [Answer each subpart separately.]

20. Admit or deny that on June 19, 1980, George Oliver inspected GDL and found:

(a) the site acceptable;

(b) the refuse compacted well; and

(c) daily cover applied. [Answer each subpart separately.]

21. Referring to the State's June 19, 1980 inspection:

(a) What quantity of blowing paper was observed and did that quantity constitute a threat to the environment and/or the health of the citizens of Indiana? If so, discuss your response in detail.

(b) What were the wind conditions on that particular day?

22. Referring to the State's inspection report of October 30, 1979:

(a) What was the quantity of "hazardous waste" which was improperly disposed of, and for each waste, was the waste an industrial waste, a RCRA hazardous waste, or both?

(b) Was this waste subject to, or similar in nature to waste subject to, a Special Permission Letter issued by Indiana?

(c) What was the nature and amount of exposed refuse observed in the northeastern portion of the property?

(d) What is the quantity and type of oil which was being placed in the trench? Describe the anticipated adverse environmental impact of this practice?

23. Referring to the State's April 18, 1979 inspection report:

(a) Which sections of the clay wall were not completed?

(b) How close were these missing sections to the working areas of the landfill?

(c) Upon what date was the wall to be completed as per the State-approved plan?

24. Admit or deny that on Nowember 30, 1978, Bruce Palin and Jim Hunt inspected GDL and found the site acceptable.

25. Admit or deny that on August 17, 1978, Bruce Palin inspected GDL and found the site acceptable.

26. Admit or deny that on June 20, 1978, Bruce Palin inspected GDL and found the site acceptable.

27. Referring to the State's June 20, 1978 inspection report:

(a) Doesn't the notation that the "U.S. Reduction dust was causing a tremendous dust problem" and that there was a "need to contact the industry about this" indicate that the

dust problem was caused by U.S. Reduction and not Gary Development? If not, discuss your response in detail.

(b) What were the results of the water quality tests which were requested to be sent to the Board?

28. Referring to the State's May 9, 1978 inspection report:

(a) What are the anticipated adverse environmental impacts of disposing of these particular oily wastes at GDL?

(b) What specific inadequacy was found with the daily cover?

29. Referring to the State's April 7, 1978 inspection report:

(a) Were any tests conducted upon the samples taken of the discharge?

(b) If so, produce the results of those tests.

30. Referring to the State's April 7, 1978 report, what methodology was employed by the Inspectors to ascertain that the alleged insufficiently covered materials were materials dumped at the site on a date previous to the date of inspection?

31. Referring to the State's March 15, 1978 inspection, could any of the ponded water on the site have been due to environmental factors, such as a spring melt or heavy rains, which are beyond the control of the operator? Discuss your answer in detail.

32. Other than the State's March 15, 1978 report, have any incidents of scavenging been detected by Inspectors at the site?

33. Admit or deny that prior to March 15, 1978, the operation of GDL was never deemed unacceptable by the State.

34. Admit or deny that on October 15, 1976; August 10, 1976; July 14, 1976; April 5, 1976; December 2, 1975; June 4, 1975; April 1, 1975; and January 30, 1975, the overall operation of the site was rated "good" by the State.

35. Admit or deny that on December 17, 1974, the overall operation of GDL was rated "excellent" by the State.

36. Does the State provide its Inspectors of solid/hazardous waste facilities with a training manual or any other similar document, containing guidelines, requirements, procedures, or recommendations to be used by Inspectors in the course of their inspections? If so, produce said manual or documents, and all documents relating to said manual or documents.

37. Does the State provide, or if not, send its potential Inspectors to, a training program of any kind, formal or informal, which individuals must attend and/or pass prior to becoming official Inspectors of the State of Indiana?

(a) If so, discuss in detail the nature of such programs; produce all documents relating thereto; and provide proof that the Inspectors whose names appear in the inspection reports referred to in Interrogatory 6 above successfully completed such a program.

(b) What are the educational and/or experience requirements demanded by the Board for landfill Inspectors.

(c) For those Inspectors which have participated in inspections of GDL, list

(i) the educational background of each Inspector including the degree conferred, the school from which the degree was conferred, the date of conferral;

(ii) the landfill-related work experience of each Inspector including, the length and type of experience each has had

(1) inspecting landfills for the State of Indiana;

(2) inspecting landfills for private organizations;

(3) managing or operating landfills;

(4) working at landfills.

38. Is it a generally accepted practice by the State and/or its Inspectors not to place "cover" on a landfill until the end of the day when the landfill stops accepting wastes for that day?

(a) If the answer to the above question is yes, how can an Inspector determine at a period of time when a landfill is continuing to accept wastes, whether cover for that day is or will be adequately applied to the landfill? Discuss this answer in detail.

(b) If the answer to the main question contained in number 38 above is no:

(i) at what point in time does the State require that cover be applied?

(ii) cite any and all regulations, and refer to any and all documents establishing, relating to, and discussing such a requirement.

(c) Produce any and all documents relating to and/or discussing the time when cover is to be applied under Indiana law.

D. SPECIAL PERMISSION LETTERS:

39. We have in our possession the following "Special Permission Letters" (as used herein, the term "Special Permission Letters" refers to those letters issued by the State granting authority to dispose of hazardous or special wastes pursuant to 320 IAC 5-5-14) issued by the State to GDL:

Date	Waste Type	Waste Quantity
1/14/81	Fly Ash	80,000 cubic yards for calendar year 1981

Date	Waste Type	Waste Quantity
1/9/81	Asbestos	50 cubic yards (one-time-only basis)
12/17/80	Pipe Insulating Asbestos Waste	300 cubic yards (one-time-only basis)
12/9/80	Metal Shavings	25 cubic yards per year
10/30/80	Asbestos Contaminated Material	700 cubic yards (one-time-only basis)
8/25/80	Asbestos	100 cubic yards (one-time-only basis)
5/14/80	Asbestos	40 cubic yards per week for four weeks; 20 cubic yards every other week thereafter
5/13/80	Fly Ash	15,000 cubic yards
11/27/79	Aluminum Dross (Milling Dust and Slag)	300 tons per day until June 15, 1980
3/20/79	Furnace Brick, Pallets	Unspecified
4/28/78	Water and Vegetable Oil	4,000 gallons (one-time-only basis)
11/18/77	Herbicide	120 cubic yards (one-time-only basis)
9/6/77	Oily Waste From 6-Stand Oil Recovery Unit	1,200 gallons per day
7/22/77	Filter Cake Kiln Scrubber Mud	1,500 pounds per week 3,000 pounds per week
6/3/77	API Separator Bottoms	200 cubic yards per year
6/1/77	Lime Sludge	80,000 gallons per month (not more than 4,000 gallons per day)
5/17/77	Asbestos Paper	105 cubic yards per week
5/12/77	Filter Cake Scrubber Mud	1,500 pounds per week 3,000 pounds per week (Temporary Approval)
4/25/77	Activated Biological Sludge	Unspecified
3/14/77	Calcium Sulfate	1.5 tons per day.
3/14/77	Lime Waste	80,000 gallons per month
3/4/77	Youngstown Oil Sludge	Unspecified
10/7/76	Gypsum Wastes (ph 7.9)	Quantity Unspecified
10/4/76	Calcium Carbonate	30 cubic yards per day
4/12/76	Paint Sludges	25 cubic yards per day
2/20/76	Corn Starch and Carbon Filters	Unspecified

Date	Waste Type	Waste Quantity
1/30/76	Lime Slurry	1,500 to 5,000 gallons per week
6/18/75	Neutralized Sludges	Temporary Approval
2/24/75	Dripolene	4 to 5 truckloads per week for 6 months

(a) Are the Special Permission Letters outlined above the only such letters issued by the State granting permission to any person or company to dispose of hazardous or special wastes at GDL? If not, list all other such letters and their date; specify the type of waste involved; identify whether such waste is an industrial waste, a RCRA hazardous waste, or both; and produce copies of such letters and all documents relating thereto.

(b) Has the State ever orally granted special permission to dispose of special or hazardous waste at GDL and not followed up on such oral approval with a letter? If so, state the date of such approval; the generator and type of waste involved; and the amount and duration of the waste permitted to be disposed of.

(c) Admit or deny that the above chart accurately sets forth the Special Permission Letters granted to GDL, and the type, amount, and duration of the disposal of such wastes. If you deny this statement, specify the inaccuracies, and set forth, in detail, a correct replacement chart.

(d) Admit or deny that the State could not and would not issue the above Special Permission Letters unless it determined that disposal of such wastes at GDL would not pose an unreasonable risk of harm to the environment or health of the citizens of Indiana.

(e) If Respondent denies subpart (d) above, then state in detail under what conditions the Board would issue a Special Permission Letter knowing that disposal pursuant to said letter would pose an unreasonable risk of harm to the environment or health of the citizens of Indiana.

(f) Discuss in detail the considerations the Board addresses in reviewing a Special Permission Letter request and the factors which lead the Board to grant or deny such requests.

(g) Produce any and all documents relating to your responses to Interrogatory 39.

40. Regarding each entry contained in the chart in Interrogatory 39 above, for each waste and entry listed, state whether each waste is an industrial waste, a RCRA hazardous waste, or both. Discuss in detail the categorization of each waste, the properties that render each waste "hazardous," and produce all documents relating to this Interrogatory.

41. Admit or deny that a Special Permission Letter which grants the right to dispose of a particular waste at a given rate per unit of time (e.g. 40 cubic yards per week) remains in effect until the permission expires of its own terms or until the State takes further action regarding said permission. If Respondent denies this statement, then discuss in detail the ways such a Special Permission Letter becomes ineffective and invalid. Produce documents relating to this Interrogatory.

42. For each waste set forth in the chart in Interrogatory 39 above, discuss in detail the reasons why GDL cannot <u>and</u> should not continue accepting such wastes; the potential risk to the environment and health of the citizens of Indiana associated with continued acceptance of each such waste in like quantities at GDL; why disposal of such waste now is denied while it was previously permitted; and produce all documents relating to this Interrogatory.

43. Have any state inspections of GDL revealed improper disposal practices relating to the disposal of each waste listed in the chart in Interrogatory 35 above? If so, discuss in detail the alleged improper practices, the dates on which

these improper practices were observed, the potential environmental problems associated with said practices, and produce all documents relating to this Interrogatory.

44. GDL received permission to accept the following listed wastes:

Waste Type	Permission Letter Date	Amount Allowed
API Separator Bottoms	6/3/77	200 cubic yards
Paint Sludges	4/12/76	25 cubic yards
Solid Corn Starch	2/20/76	Unspecified
Carbon Filters from Corn Syrup Filtering Processes	2/20/76	Unspecified
Lime Sludges	6/1/77	80,000 gallons per month or 4,000 gallons per day
Lime Waste	3/14/77	80,000 gallons per month
Calcium Carbonate	10/4/76	30 cubic yards per day
Lime Sludge	1/30/76	1,500 to 5,000 gallons per week
Activated Biological Sludge	4/25/77	Unspecified
Calcium Sulfate	3/14/77	1.5 tons per day
Gypsum Wastes (no Cd or Pb)	10/7/76	Unspecified

For each of the above-mentioned wastes, answer the following questions:

(a) Admit or deny that permission was received by GDL to receive this waste.

(b) Is each waste listed an industrial waste, a RCRA hazardous waste, or both? Cite the authority for, and the regulations supporting, this categorization.

(c) Admit or deny that the above approvals to accept each waste listed were given on a continuing basis? If you deny this statement, discuss your response in detail.

(d) For each waste identified above, discuss in detail the anticipated adverse environmental impacts of continued disposal of these material at GDL.

(e) In the past, have inspections revealed any improper dumping practices relating to the disposal of these wastes identified above? If so, discuss in detail the specific instances and problems, give the dates of the inspections, and produce all documents relating thereto.

(f) Discuss in detail the State's reasons for denying approval to Gary Landfill to accept each waste listed above in the future?

E. MISCELLANEOUS:

45. What specific corrective actions do you contend are necessary to place the landfill in compliance with the applicable state laws and regulations and to enable GDL to accept hazardous and/or industrial wastes?

46. Identify each person the State plans to call as a witness at the hearing of this matter, each person's address and telephone number (business or personal), and state in reasonable detail the anticipated testimony of each.

47. Produce all inspection reports of, and Special Permission Letters granted relating to, the following landfills:

(a) the Wheeler Landfill;

(b) the City of Gary Landfill;

(c) the City of Munster Landfill; and

(d) the J & D Landfill.

48. If any of the landfills listed in Interrogatory 47 above may lawfully accept industrial wastes, discuss in detail the reasons therefor, and the specific reasons for treating any of these landfills differently from GDL.

John M. Kyle III

John M. Kyle III

Vic Indiano /SMKH

Vic Indiano

Attorneys for Gary Development Company, Inc.

Of Counsel:

BARNES & THORNBURG
1313 Merchants Bank Building
Indianapolis, Indiana 46204
Telephone: (317) 638-1313

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing "Petitioner's First Set Of Interrogatories, Requests For Admissions, And Requests For The Production Of Documents" has been served on the Respondent by depositing a copy thereof in the United States First Class Mail, addressed to:

Mathew S. Scherschel, Deputy Attorney General
Counsel for Environmental Management Board of
the State of Indiana
Room 219, State House
Indianapolis, Indiana 46204;

and hand delivered to Ms. Brenda Rodeheffer, counsel for Respondent, and Mr. George Oliver of the Division of Land Pollution Control, as a courtesy.

This 25th day of August, 1982.

John M. Kyle III

John M. Kyle III

Reference OO
Response to Petitioner's First set of Interrogatories
and other court related documents

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

BEFORE THE ENVIRONMENTAL MANAGEMENT BOARD OF THE STATE OF INDIANA

RECEIVED
SEP 27 1982
INDIANA STATE BOARD OF HEALTH
ASSISTANT COMMISSIONER FOR
ENVIRONMENTAL HEALTH

IN THE MATTER OF
GARY DEVELOPMENT, INC.,

Petitioner,

v.

THE ENVIRONMENTAL
MANAGEMENT BOARD OF
THE STATE OF INDIANA,

Respondent.

CAUSE NO. N-53

RESPONDENT'S ANSWERS TO PETITIONER'S FIRST SET OF INTERROGATORIES, REQUESTS FOR ADMISSIONS AND REQUESTS FOR THE PRODUCTION OF DOCUMENTS

Comes now the Respondent, the ENVIRONMENTAL MANAGEMENT BOARD OF THE STATE OF INDIANA, by counsel Linley E. Pearson, Attorney General of the State of Indiana, by Mathew S. Scherschel, Deputy Attorney General, and in response to Petitioner's First Set of Interrogatories, Requests for Admissions and Requests for the Production of Documents, says:

A. THE TYPE OF WASTE INVOLVED:

1. Admit or deny that the staff of the Indiana Environmental Management Board (hereafter referred to as "Respondent" or "the State") has refused to grant Petitioner permission to continue accepting "hazardous wastes" as defined in 320 IAC 5-2-1 (1982 Cum. Supp.) (these wastes as so defined are hereafter referred to as "industrial wastes") at the Gary Development Landfill ("GDL").

1. Deny that Board staff refused to grant permission to continue accepting hazardous waste but admit that the Board has refused to grant such permission.

(a) Admit or deny that the term industrial wastes covers a much broader range of wastes than is covered by the definition and listing of "hazardous wastes" contained in 320 IAC 4-3 (1982 Cum. Supp.: all citations to 320 IAC used hereafter refer to the current, 1982 Cumulative Supplement, unless specifically noted otherwise).

(a). Admit.

(b) Admit or deny that the wastes covered by 320 IAC 4-3 (hereafter: "RCRA hazardous wastes") are the wastes covered by the federally-inspired hazardous wastes management program pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. 6901, et seq.

(b) Admit.

(c) Admit or deny that many industrial wastes do not possess the same pernicious (as used herein, the term "pernicious" means "injurious or destructive to human health or the environment") characteristics as RCRA hazardous wastes.

(c) Admit.

(d) Admit or deny that many industrial wastes do not possess the same degree of pernicious characteristics as RCRA hazardous wastes.

(d) Admit.

(e) Admit or deny that RCRA hazardous wastes are a subset of industrial wastes.

(e) Admit.

(f) Admit or deny that the category of industrial wastes which are not also classified as RCRA hazardous wastes are, generally speaking, less pernicious than RCRA hazardous wastes.

(f) Admit.

(g) Admit or deny that the category of industrial wastes which are not also classified as RCRA hazardous wastes do not, generally speaking, possess the same hazardous or pernicious characteristics as recrewaste, but rather, includes all industrial wastes which possess "inherent dangers."

(g) Admit

(h) If your response to any of the above requests for admissions is one of denial, explain in detail the reason for your denial including examples of the wastes which do not meet the above categorizations, and discuss the characteristics of each such waste.

(h) Explanation included in answer to Interrogatory 1.

(i) Produce all documents relating to your responses to the questions and requests for admissions contained in Interrogatory 1 and all subparts hereto.

(i) The answers in 1. are substantiated in 320 IAC 4 and 320 IAC 5.

B. <u>THE STATE'S REASONS FOR DENYING GDL CONTINUED AUTHORITY TO ACCEPT INDUSTRIAL WASTE</u>:

2. In Mathew Scherschel's, attorney for Respondent, letter to John M. Kyle III dated August 3, 1982, Mr. Scherschel said that one of the reasons GDL had been denied permission to continue accepting industrial wastes was:

> The geologic setting of Petitioner's site is marginal. Therefore, the site construction techniques are very important, and were to "make up for" that marginal geologic setting. The site construction by Petitioner has been poor, as shown by noncompliance with the approved construction plans. Because of the techniques used, there is no "back up" for existing geology.
> (a) Discuss all reasons for classifying the GDL site as geologically "marginal."

2. (a) (1) The site consists of a pit in very fine-grained beach and dunal sand. The sand has a hydraulic conductivity of .02 cm/sec,

which is insufficient to retain the flow of contaminants beyond the site boundary. The sand offers little if any attenuation of leachate.

(2) The sand is a saturated unconfined aquifer with a high water table. Any movement of contaminant beyond the site is a hazard to groundwater resources. 320 IAC 5-5-6(c) prohibits filling into an aquifer. A barrier of undisturbed soil must be maintained between the refuse and the aquifer.

(3) The site is located adjacent to the Grand Calumet River. The movement of leachate beyond the pit is a hazard to the surface water resources.

(4) The site is located in a flood hazard area. An Indiana Department of Natural Resources (DNR) permit for flood plain alteration has never been acquired.

(5) Due to the fact that the site is in an aquifer, the operator has had to dewater the pit. The infiltrating groundwater quality is potentially poor and the operator has failed to provide sufficient testing of the collected groundwater before discharging it to the Grand Calumet.

(6) Sand has been used for cover material. Sand as cover material does not prohibit precipitation from entering the refuse and producing leachate.

(b) Admit or deny that numerous landfills exist in this same general geologic setting and that such landfills legally and illegally accept industrial wastes.

(b) Deny.

(c) List all such landfills and their addresses referred to in your response to subparagraph (b) above; list all industrial wastes which the State has allowed, pursuant to 320 IAC 5-5-14, to be disposed of at such landfills; categorize each waste listed as either industrial or RCRA hazardous waste (as defined above) or both; described each waste's hazardous characteristics; and discuss the current State action to limit or eliminate disposal of such waste in said landfills.

(c) Not applicable.

(d) Isn't true that certain construction techniques or other measures can be undertaken to compensate techniques and measures and discuss in detail how these reasons would protect the environment and be incorporated at GDL.

(d) It is true. Such examples were proposed in the original GDL plans and in the amendment to the construction permit. It is very

difficult to say what other techniques might be available and applicable to the specific geology of the GDL site.

(e) Discuss in detail all specific examples supporting the State's allegation that Petitioner had not complied with approved construction plans.

(e) Non-compliance with 1973 Construction Plan.

(1) External dewatering system not constructed around entire site.

(2) Discharge of water to the Grand Calumet not monitored.

(3) Flow meter on discharge to Grand Calumet not utilized.

(4) Initial clay liner surrounding the entire site not constructed.

(5) Leachate from site was not taken to a wastewater treatment plant.

(6) A gas venting system has not been installed on finished areas.

(7) Leachate collection system not constructed.

Non-compliance with 1980 Construction Plan Amendment

(1) Failure to utilize impervious clay soil for daily cover.

(2) Failure to construct clay berm by compacting 12-inch layers of clay to 90% Standard Proctor Density.

(3) Failure to follow operational plan specifying fill sequence and progression.

(f) Discuss at length the specific actions, techniques, or construction measures which you contend would render GDL a suitable site to dispose of industrial wastes, or at least some types of industrial wastes.

(f) Staff does not contend that the site can be rendered suitable for industrial waste disposal.

(g) Do you contend that GDL is unsuitable to accept any waste classified as "industrial." Discuss your response in detail.

(g) Yes. The vital past construction necessary to protect the environment was not verified and the site cannot be judged as secure enough to accept industrial waste which would compound problems with any leachate movement away from the site.

(h) Produce all documents relating to your responses to Interrogatory 2 and all subparts thereto.

(h) Geologic evaluation and USGS quadrangle map are attached. (Attachment A).

3. Mr. Scherschel's August 16th letter referred to in Interrogatory 2 above, gave the following additional reasons for denying GDL the ability to receive industrial wastes:

> There have (sic: has) been an unacceptable daily operation on-site, thereby not providing a good site for secure disposal of the subject hazardous wastes. The unacceptable daily operations include the non-provision of sufficient daily cover, as well as the manner in which Petitioner has handled and compacted solid waste. The use of fly ashes cover is not acceptable due to the permiability (sic: permeability) of that material.

(a) Discuss in detail all specific examples, giving dates and times, of such alleged "unacceptable daily operation on-site."

3. (a) See inspection reports for the following dates; 3/15/78, 4/7/78, 5/9/78, 4/18/79, 8/24/79, 10/30/79, 9/19/80, 11/14/80, 1/8/81, 8/20/81.

(b) Discuss in detail the allegation that insufficient daily cover has been used, referring to the date and time that such insufficient cover allegedly occurred, refer to the specific inspection reports supporting such allegation, and discuss expected adverse environmental impacts arising from such alleged practices.

(b) See inspection reports for the following dates; 3/15/78, 4/7/78, 5/9/78, 4/18/79, 8/24/79, 10/30/79, 9/19/80, 11/14/80, 1/8/81, 8/20/81. The lack or inadequacy of daily, intermediate or final cover can cause the following problems:

NOTE: Under definitions of "contaminant," "air pollution," and "water pollution" under IC 13-7-1-2; the prohibited acts described under IC 13-7-4-1; and the authority to issue permits under IC 13-7-10; the Board is authorized to regulate acts concerning contaminants which are, or threaten to be, injurious to human health, plant or animal life, to property, or to enjoyment of life or property, or with contaminants which threaten nuisance, or which render waters harmful, detrimental, or injurious to public health, safety, or welfare. Wherever Respondent claims more specific effects other than just "environmental impacts," Respondent will so indicate by means of an asterisk.

(1) Infiltration of precipitation causing leachate which can move to the perimeter where the leachate collection system and side barrier were improperly constructed.

Movement of leachate outside the site will degrade surface and ground waters.

(2) Allow bird population to feed on wastes, flock around the site and possibly interfere with aircraft at the nearby airport.* (nuisance)

(3) Allow vectors to feed on exposed refuse. *(public health)

(4) Allow underground fires to spread. *(public health & safety)

(5) Allow odors to permeate through the area. *(nuisance)

(c) Discuss in detail the allegation that Petitioner has improperly handled and compacted solid waste, refer to the date and time of such alleged improper handling and compaction, refer to specific inspection reports supporting this allegation, and discuss the adverse environmental impacts arising from such alleged practices.

(c) See inspection reports for the following dates; 3/15/78, 4/7/78, 8/24/79, 11/14/80, 1/8/81. Adverse impacts would be the same as above with the addition of the following:

(1) Create steep slopes endangering the safety of equipment operators.* (health and safety)

(2) Allow voids which later subside and create depressions capable of ponding water at the top of a finished surface. * (leachate generation & public health)

(d) Discuss in detail the allegation that Petitioner has utilized fly ash in lieu of other acceptable cover, refer to the date and time of such alleged practice, refer to the specific inspection reports supporting such allegation, and discuss the expected adverse environmental impacts arising from such alleged practices.

(d) See inspection report dated 8/20/81.

(1) Fly ash, as distinguished from the fly ash admixture, does not have as low a permeability as clay soil cover and will allow greater amounts of precipitation to enter the refuse and create leachate. * (surface and ground water contamination)

(2) Fly ash is generally not inert and allows degradation of precipitation causing leachate as the precipitation migrates through it. * (surface and ground water contamination)

(e) Has fly ash or shredder material ever been used in lieu of other cover, or has it rather been used in addition thereto? Discuss your response in detail.

(e) Fly ash and shredder material have both been used in lieu of other cover.

(f) Has the State ever granted GDL, verbally or in writing, permission to use fly ash or shredder material as top surfacing for cover and not in lieu of cover? Discuss your answer in detail.

(f) The State has never granted permission for fly ash or shredder material to be used as top surfacing at Gary Development; however, the inspector has not objected to the use of fly ash for developing roads over filled areas.

(g) Defining "marker pile" as a compacted pile of refuse left overnight to serve as a guidepost for initiating the next day's dumping, does the State in fact permit this practice? If so, how large may such a marker pile be? Do any of the examples given of allegedly insufficient daily cover include, in whole or in part, uncovered marker piles? Discuss your response to this subpart in detail.

(g) No.

4. Discuss in detail any and all reasons not covered by the discussion in Interrogatories 2 and 3 above, leading to the State's refusal to grant GDL the continued ability to accept industrial wastes.

4. GLD has not complied with quarterly groundwater monitoring for conventional and industrial waste disposal in the past. The clay seal is not impervious as initially stated in the construction plans. No proof of side barrier compaction has ever been submitted. Gas vents were never installed as outlined in the plans. Routine monitoring of external dewatering was not done as outlined, nor was a flow meter established on the dewatering discharge. A National Pollution Discharge Elimination System (NPDES) permit has not been obtained for the discharge. Fly ash and foundry sand were not proven to be inert for use as cover.

5. Produce all documents discussing or relating to your responses to Interrogatories 2 through 5 above.

5. See attachment A and referenced inspection reports.

C. INSPECTIONS:

6. We have in our possession copies of inspection reports performed by Indiana State Board of Health inspectors of GDL for the following dates: 1/8/82; 10/20/81; 8/20/81; 7/10/81; 4/21/81; 1/8/81; 11/14/80; 9/19/80; 7/25/80; 6/19/80; 10/30/79; 4/18/79; 11/30/78; 8/17/78; 6/20/78; 5/9/78; 4/7/78; 3/15/78; 10/20/77; 8/8/77; 5/26/77; 3/29/77; 1/20/77; 10/5/76; 8/10/76; 7/14/76; 5/26/76; 5/11/76; 4/5/76; 2/26/76; 2/11/76; 1/22/76; 12/2/75; 10/9/75; 6/4/75; 4/1/75; 1/30/75; 12/17/74; 1/4/74; and 10/5/73.

(a) Are these the only inspections conducted by the State?

6. (a) No.

(b) If other inspections have been conducted by the State, provide the dates of such inspections, the name of the Inspector(s), and produce copies of any inspection reports made pursuant to those inspections.

(b) 1/3/79 - George Oliver, 8/28/79 - George Oliver, 3/3/80 - George Oliver, 8/10/82 - George Oliver and Stu Miller, 12/28/77 - Bruce Palin See Attachment B

(c) To your knowledge, has any one other than the State conducted inspections at GDL? If so, specify the date of such inspections, the name of the Inspector(s), and produce copies of any inspection reports made pursuant to those inspections.

(c) No.

7. Referring the State's January 8, 1982, inspection report:

(a) Admit or deny that on January 8, 1982, George Oliver and Stu Miller inspected GDL and found the site acceptable;

7. (a) Admit. (From here on, an indication on an inspection report that the site is acceptable refers only to the daily operations observed at the time of the inspection.)

(b) Admit or deny that daily cover operations, including spreading and compacting of such material, were not found unacceptable;

(b) Admit.

(c) State the adverse environmental impact(s), if any, which would result from the use of foundry sand as a cover material; and

(c) The adverse environmental impact would be the same as for fly ash, except foundry sand would be even more permeable.

(d) Admit or deny that no improper handling or disposal of hazardous waste was detected.

(d) Admit.

8. Referring to the State's October 20, 1981 inspection report:

(a) Admit or deny that on October 20, 1981, George Oliver and Bill Morgan inspected GDL and found the site acceptable;

8. (a) Admit.

(b) Admit or deny that George Oliver and Bill Morgan found:

(i) that the daily operation at GDL showed "much improvement;"

(b) (i) Admit.

(ii) that the refuse was compacted;

(ii) Admit.

(iii)that the working face was in a small area; and

(iii)Admit.

(iv) that there were no violations of applicable state regulations noted. [Answer each subpart separately.]

(iv) Admit.

9. Referring to the State's inspection report of August 20, 1981:
(a) Explain the significance of the notation that "The J & L Steel Manifest # 7302-12750 - Tar Decanter Sludge and # 7302-12685 - Central Waste Treatment Plant Sludge were received at the site on 8/19/81," in the absence of any further notation that either substance was improperly disposed of by GDL.

9. (a) The report establishes that the central waste treatment plant sludge was not disposed of properly. Since the manifest for the sludge indicated the sludge was received on 8/19/81, and the report indicates it was seen on site 8/20/81, then it is established that the waste did not receive daily cover.

(b) What methodology was used to determine that the "sludge observed" originated from the Central Waste Treatment Plant Sludge Manifest # 7302-12685 and was in fact received by GDL on August 19, 1981?

(b) Reading the manifest.

(c) At the time of this inspection, was GDL closed for business, or was it continuing to accept waste for that day?

(c) Continuing to accept waste.

(d) What methodology was used to correlate the size of the working face with the amount of refuse received by Gary Development to lead the inspectors to conclude that daily cover was not being applied?

(d) Professional knowledge and experience.

(e) How large was the large working face?

(e) Do not recall.

(f) What is the anticipated adverse environmental impact of employing fly ash for a cover material? Was fly ash used in lieu of, or in addition to, other acceptable cover material?

(f) See Reply to Interrogatory 3(d).

(g) Were the engineering drawings consulted at the time of the inspection and employed contemporaneously with the determination that the leachate collection system was not being constructed as per the drawings?

(g) No.

10. Regarding the statement in the State's August 20, 1981 report that "hazardous waste is not properly disposed of:"
(a) List the specific types of hazardous waste, and their hazardous properties, which were not properly disposed of.

10. (a) Central waste treatment plant sludge. It is a RCRA hazardous waste under the F006 designation because of its potential to

leach at least one of the contaminants listed in 40 CFR 261.24.

(b) What was the improper manner in which any such waste was being disposed of?

(b) See Reply to Interrogatory 9 (a).

(c) What quantity of such waste was being disposed of?

(c) Indicated on manifest.

(d) What as the source of any such waste which was improperly disposed of?

(d) J & L Steel.

(e) Were any such wastes subject to a letter issued by the State pursuant to 320 IAC 5-5-14 (hereafter: "Special Permission Letter")?

(e) Yes.

(f) Were any such wastes similar in nature to other wastes being taken to GDL pursuant to a Special Permission Letter?

(f) The Board does not know what wastes are accepted under a special permission letter.

(g) Explain in reasonable detail the adverse environmental impacts associated with the alleged improper disposal of such wastes.

(g) The leachate from the hazardous waste or the waste itself may migrate into adjacent ground or surface waters through improperly sealed side barriers. * (ground and surface water contamination) Without proper cover, the waste is exposed to bird and vermin populations and possible human contact. * (threat to public health)

11. Admit or deny that on July 10, 1981, George Oliver and Mary Roe inspected GDL and found the site's operation acceptable.

11. Deny. A complete inspection was not conducted.

12. Referring to the July 10, 1981 inspection report:
(a) What environmental concerns were raised by GDL's acceptance of shredder material?

12. (a) As long as it is disposed of in compliance with the operational standards outlined in 320 IAC 5, there are no environmental concerns.

(b) What adverse environmental impacts were anticipated by GDL's acceptance of such shredder material?

(b) See answer to Interrogatory 12 (a).

13. Admit or deny that on April 21, 1981, George Oliver inspected GDL and found (a) site to be acceptable; (b) that the refuse was worked well; and (c) cover was applied? [Answer each subpart separately.]

13. (a) Admit.

(b) Admit.

(c) Admit.

14. Regarding the State's Aril 21, 1981 inspection report, what is the significance of the notation that Union Carbide coal ash/slag was coming to the landfill?

14. It confirmed that a material which had been approved for disposal at the site was being disposed of at the site.

15. Referring to the State's January 8, 1981 inspection report:
(a) What is the anticipated adverse environmental impact of the end of the working face being a cliff?

15. (a) The cliff indicates the refuse making up the face has not been compacted in shallow layers. See answer to Interrogatory B 3(c).

(b) Are there any weather-related factors which could have resulted in the operator being unable to maintain a 3:1 slope?

(b) No.

16. Referring to the State's November 14, 1980 inspection report:
(a) What specific areas were observed which did not have daily cover?

16. (a) Cannot recall.

(b) Which two edges approximately four feet high needed to be worked onto a 3:1 slope?

(b) Cannot recall.

(c) What is the anticipated adverse environmental impact of the Gary Landfill accepting aluminum dross?

(c) Leachate tests performed on aluminum dross showed such waste would increase several parameters of leachate generated, and compound the degradation of surface and ground water.

(d) Is aluminum dross an "industrial waste" or a "RCRA hazardous waste," or both? Please give citations of authority as to the categorization of aluminum dross, and the regulation supporting this classification.

(d) Industrial waste. 320 IAC 5.

(e) What was the source and quantity of the water and leachate which were observed seeping into the pit along the west boundary?

(e) Unknown.

17. Referring to the State's September 19, 1980 inspection, admit or deny that George Oliver inspected GDL and found that the refuse was "compacted well."

17. Admit.

18. Referring to the State's September 19, 1980 inspection, what criteria was employed by the Inspector to determine that daily cover had not been applied for two or three days?

18. Professional knowledge and experience.

19. Admit or deny that on July 25, 1980, George Oliver inspected GDL and found the site was: (a) acceptable and the operation satisfactory; and (b) that the refuse was compacted well and a cover applied. [Answer each subpart separately.]

19. (a) Admit.

(b) Admit.

20. Admit or deny that on June 19, 1980, George Oliver inspected GDL and found:
(a) the site acceptable;

20. (a) Admit.

(b) the refuse compacted well; and

(b) Admit.

(c) daily cover applied. [Answer each subart separately.]

(c) Admit.

21. Referring to the State's June 19, 1980 inspection:

(a) What quantity of blowing paper was observed and did that quantity constitute a threat to the environment and/or the health of the citizens of Indiana? If so, discuss your response in detail.

21. (a) Quantity unknown. Control of blowing litter is a requirement of Regulation 320 IAC 5.

(b) What were the wind conditions on that particular day?

(b) Do not recall.

22. Referring to the State's inspection report of October 30, 1979:
(a) What was the quantity of "hazardous waste" which was improperly disposed of, and for each waste, was the waste an industrial waste, a RCRA hazardous waste, or both?

22. (a) Quantity unknown. Industrial waste: RCRA was not in effect at the time.

(b) Was this waste subject to, or similar in nature to waste subject to, a Special Permission Letter issued by Indiana?

(b) Yes.

(c) What was the nature and amount of exposed refuse observed in the northeastern portion of the property?

(c) Refuse typically disposed of at the site. Approximately one acre in surface area, depth is unknown.

(d) What is the quantity and type of oil which was being placed in the trench? Describe the anticipated adverse environmental impact of this practice?

(d) Quantity and type unknown. Exposing refuse and destroying daily cover. [See answer to Interrogatory 3 (b)]. Practice is also a violation of the approval letter for the waste which states that waste must be mixed with the daily refuse and receive daily cover.

23. Referring to the State's April 18, 1979 inspection report:
(a) Which sections of the clay wall were not completed?

23. (a) West wall, south wall and north wall were not completed.

(b) How close were these missing sections to the working areas of the landfill?

(b) Cannot recall.

(c) Upon what date was the wall to be completed as per the State-approved plan?

(c) The completion date for the wall is not a set date. The construction of the wall is to be extended up ahead of the filling and be completed prior to the site reaching its final elevations.

24. Admit or deny that on November 30, 1978, Bruce Palin and Jim Hunt inspected GDL and found the site acceptable.

24. Deny.

25. Admit or deny that on August 17, 1978, Bruce Palin inspected GDL and found the site acceptable.

25. Deny.

26. Admit or deny that on June 20, 1978, Bruce Palin inspected GDL and found the site acceptable.

26. Deny.

27. Referring to the State's June 20, 1978 inspection report:

(a) Doesn't the notation that the "U.S. Reduction dust was causing a tremendous dust problem" and that there was a "need to contact the industry about this" indicate that the dust problem was caused by U.S. Reduction and not Gary Development? If not, discuss your response in detail.

27. (a) No, Gary Development has the responsibility to maintain the landfill in a nuisance free condition through its operational procedures. If particular wastes are creating a problem at a site, the operator may either correct the problem or refuse to accept the waste.

(b) What were the results of the water quality tests which were requested to be sent to the Board?

(b) No request was made to send samples to the Board.

28. Referring to the State's May 9, 1978 inspection report:
(a) What are the anticipated adverse environmental impacts of disposing of these particular oily wastes at GDL?

28. (a) The problem with the waste at the time of the inspection was how it was handled. Trenches were dug into already filled areas exposing refuse and creating the problems outlined in the answer to

Interrogatory 3(b). The situation also presented a hazard to any vehicular or pedestrian traffic which could inadvertently fall into the pit.

(b) What specific inadequacy was found with the daily cover?

(b) The daily cover had been removed to dig pits in the refuse for disposing of the oily waste.

29. Referring to the State's April 7, 1978 inspection report:

(a) Were any tests conducted upon the samples taken of the discharge?

29. (a) Yes.

(b) If so, produce the results of those tests.

(b) See Attachment C.

30. Referring to the State's April 7, 1978 report, what methodology was employed by the Inspectors to ascertain that the alleged insufficiently covered materials were materials dumped at the site on a date previous to the date of the inspection?

30. Professional knowledge and experience.

31. Referring to the State's March 15, 1978 inspection, could any of the ponded water on the site have been due to environmental factors, such as a spring melt or heavy rains, which are beyond the control of the operator? Discuss your answer in detail.

31. Yes, the ponded water could have been due to environmental factors; but, no, it is not beyond the control of the operator. The landfill should be graded on both filled and unfilled areas to promote runoff of surface water and to prevent ponding.

32. Other than the State's March 15, 1978 report, have any incidents of scavenging been detected by Inspectors at the site?

32. Yes, 8/24/79.

33. Admit or deny that prior to March 15, 1978, the operation of GDL was never deemed unacceptable by the State.

33. Deny.

34. Admit or deny that on October 15, 1976; August 10, 1976; July 14, 1976; April 5, 1976; December 2, 1975; June 4, 1975; April 1, 1975; and January 30, 1975, the overall operation of the site was rated "good" by the State.

34. Deny for October 15, 1976 as we have no record of an inspection on that date. Admit to good ratings on the rest of the dates.

35. Admit or deny that on December 17, 1974, the overall operation of GDL was rated "excellent" by the State.

35. Admit.

36. Does the State provide its Inspectors of solid/hazardous waste facilities with a training manual or any other similar document, containing guidelines, requirements, procedures, or recommendations

to be used by Inspectors in the course of their inspections? If so, produce said manual or documents, and all documents relating to said manual or documents.

36. No.

37. Does the State provide, or if not, send its potential Inspectors to, a training program of any kind, formal or informal, which individuals must attend and/or pass prior to becoming official Inspectos of the State of Indiana?

37. No, all training is on the job training and there is no test which will pass or fail an inspector.

(a) If so, discuss in detail the nature of such programs; produce all documents relating thereto; and provide proof that the Inspectors whose names appear in the inspection reports referred to in Interrogatory 6 above successfully completed such a program.

(a) Not applicable.

(b) What are the education and/or experience requirements demanded by the Board for landfill Inspectors.

(b) The minimum requirements are as follows:

Sanitarian V - General - Three (3) years full time paid professional experience in public or environmental health. Accredited college training may substitute for the required experience with a maximum substitution of three (3) years. (15 semester hours in MATHEMATICS, PHYSICS, CHEMISTRY, BIOLOGY, NATURAL RESOURCES, PUBLIC HEALTH or ENVIRONMENTAL HEALTH SCIENCES required.)

Sanitary Engineer V - Graduation from an accredited four-year college. (Major in ENGINEERING required) License to practice engineering in the State of Indiana may substitute for the above requirement.

(c) For those Inspectors which have participated in inspections of GDL, list

(i) the educational background of each Inspector including the degree conferred, the school from which the degree was conferred, the date of conferral;

(c) (i) Bruce H. Palin, Bachelor of Science in Electrical Engineering, Rose - Hulman Institute of Technology, May 1976.

George E. Oliver, Bachelor of Science in Environmental Health, Indiana State University, March 1973.

Stuart Miller, Bachelor of Science in Biology, Ball State University, August 1975.

(ii) the landfill-related work experience of each Inspector including, the length and type of experience each has had

(1) inspecting landfills for the State of Indiana;
(2) inspecting landfills for private organizations;
(3) managing or operating landfills;
(4) working at landfills.

(ii) (1) Bruce Palin - 4 years inspecting landfills and 2 years supervising the Engineering Review Section; George Oliver - 2 years experience inspecting sanitary landfill, Allegheney Co. Health Dept. Pittsburgh, PA., 6 1/2 years, one year experience, supervisor of industrial waste approval program; and Stuart Miller, 2 1/2 years as inspector for the state.

(2) None for neither inspector.

(3) None for neither inspector.

(4) None for neither inspector.

38. Is it a generally accepted practice by the State and/or its Inspectors not to place "cover" on a landfill until the end of the day when the landfill stops accepting wastes for that day?

38. Yes. Daily cover is to be applied at the end of the operating day under 320 IAC 5-5-13(b). The operating day is designated by the Sanitary Landfill Operator in the approved construction plan.

(a) If the answer to the above question is yes, how can an Inspector determine at a period of time when a landfill is continuing to accept wastes, whether cover for that day is or will be adequately applied to the landfill? Discuss this answer in detail.

(a) The rule presumes that an operator has management control over the operation of the facility, and that he has scheduled the operating day to include the hours for acceptance of waste, and an allowance of time to apply cover.

(b) If the answer to the main question contained in number 38 above is no:

(i) at what point in time does the State require that cover be applied?

(ii) cite any and all regulations, and refer to any and all documents establishing, relating to, and discussing such a requirement.

(b) Not Applicable.

(c) Produce any and all documents relating to and/or discussing the time when cover is to be applied under Indiana law.

(c) References may be found in 320 IAC 5 and the site construction plan.

D. SPECIAL PERMISSION LETTERS:

39. We have in our possession the following "Special Permission Letters" (as used herein, the term "Special Permission Letters" refers to those letters issued by the State granting authority to dispose of hazardous or special wastes pursuant to 320 IAC 5-5-14) issued by the State to GDL:

Date	Waste Type	Waste Quantity
1/14/81	Fly Ash	80,000 cubic yards for calendar year 1981
1/9/81	Asbestos	50 cubic yards (one-time-only basis
12/17/80	Pipe Insulating Asbestos Waste	300 cubic yards (one-time-only basis
12/9/80	Metal Shavings	25 cubic yards per year
10/30/80	Asbestos Contaminated Material	700 cubic yards (one-time-only basis
8/25/80	Asbestos	100 cubic yards (one-time-only basis
5/14/80	Asbestos	40 cubic yards per week for four weeks; 20 cubic yards every other week thereafter
5/13/80	Fly Ash	15,000 cubic yards
11/27/79	Aluminum Dross (Milling Dust and Slag)	300 tons per day until June 15, 1980
3/20/79	Furnace Brick, Pallets	Unspecified
4/28/78	Water and Vegetable Oil	4,000 gallons (one-time-only basis)
11/18/77	Herbicide	120 cubic yards (one-time-only basis)
9/6/77	Oily Waste From 6-stand Oil Recovery Unit	1,200 gallons per day
7/22/77	Filter Cake	1,500 pounds per week
	Kiln Scrubber Mud	3,000 pounds per week
6/3/77	API Separator Bottoms	200 cubic yards per year
6/1/77	Lime Sludge	80,000 gallons per month (not more than 4,000 gallons per day)
5/17/77	Asbestos Paper	105 cubic yards per week
5/12/77	Filter Cake	1,500 pounds per week
	Scrubber Mud	3,000 pounds per week (Temporary Approval)
4/25/77	Activated Biological Sludge	Unspecified
3/14/77	Calcium Sulfate	1.5 tons per day
3/14/77	Lime Waste	80,000 gallons per month
3/4/77	Youngstown Oil Sludge	Unspecified
10/7/76	Gypsum Wastes (ph 7.9)	Quantity Unspecified
10/4/76	Calcium Carbonate	30 cubic yards per day
4/12/76	Paint Sludges	25 cubic yards per day
2/20/76	Corn Starch and Carbon Filters	Unspecified
1/30/76	Lime Slurry	1,500 to 5,000 gallons per week
6/18/75	Neutralized Sludges	Temporary Approval
2/24/75	Dripolene	4 to 5 truckloads per week for 6 months

(a) Are the Special Permission Letters outlined above the only such letters issued by the State granting permission to any person or company to dispose of hazardous or special wastes at GDL? If not, list all other such letters and their date; specify the type of waste involved; identify whether such waste is an industrial waste, a RCRA hazardous waste, or both; and produce copies of such letters and all documents relating thereto.

39. (a) No. 3/19/77 Terminal Treatment Sludge Unspecified

6/16/75 Aluminum Oxide Sludge 40,000 lb/day

Both of these wastes are industrial wastes and at the time

of approval RCRA was not in effect. See Attachment D for copies of the above-referenced letters.

(b) Has the State ever orally granted special permission to dispose of special or hazardous waste at GDL and not followed up on such oral approval with a letter? If so, state the date of such approval; the generator and type of waste involved; and the amount and duration of the waste permitted to be disposed of.

(b) No knowledge of this occuring.

(c) Admit or deny that the above chart accurately sets forth the Special Permission Letters granted to GDL, and the type, amount, and duration of the disposal of such wastes. If you deny this statement, specify the inaccuracies, and set forth, in detail, a correct replacement chart.

(c) Deny. See answer to Interrogatory 39 (a).

(d) Admit or deny that the State could not and would not issue the above Special Permission Letters unless it determined that disposal of such wastes at GDL would not pose an unreasonable risk of harm to the environment or health of the citizens of Indiana.

(d) The state admits to exercising such caution and adds that it exercises the same regard for health and environment when it recalls permission letters upon subsequent discovery that disposal of such wastes is not being done in accordance with established standards and facility design.

(e) If Respondent denies subpart (d) above, then state in detail under what conditions the Board would issue a Special Permission Letter knowing that disposal pursuant to said letter would pose an unreasonable risk of harm to the environment or health of the citizens of Indiana.

(e) Not Applicable.

(f) Discuss in detail the considerations the Board addresses in reviewing a Special Permission Letter request and the factors which lead the Board to grant or deny such requests.

(f) In evaluating a request for a Special Permission Letter, the following criteria is used:

(A) With regard to the facility:

(1) Is the facility a sanitary landfill (SLF);

(2) Is the SLF on a phase-out or closure schedule;

(3) Are there permit conditions on the SLF permit that would restrict or limit the disposal of special or hazardous wastes;

(4) Does the facility have documented geologic limitations;

(5) Does the daily operational history of the facility show a record of consistent compliance with the regulations;

(6) Has leachate been identified on-site or flowing off-site;

(7) Are there any pending legal actions against the facility which would prohibit special waste approval; and

(8) The volume of solid waste at the facility.

(B) The waste material is evaluated to determine:

(1) If it is a RCRA hazardous waste or whether it exhibits any characteristics of a RCRA hazardous waste;

(2) The per cent of solids in the waste (if a liquid), or the water content of the waste;

(3) The industrial process from which the waste is generated to be aware of the chemical constituents involved;

(4) Whether the waste contains any chemicals or constituents which would contaminate ground or surface water;

(5) Whether the waste, by virtue of its volume, odor, physical state or other characteristic, would cause or threaten to cause adverse operational, safety or environmental effects at the SLF.

(g) Produce any and all documents relating to your responses to Interrogatory 39.

(g) None.

40. Regarding each entry contained in the chart in Interrogatory 39 above, for each waste and entry listed, state whether each waste is an industrial waste, a RCRA hazardous waste, or both. Discuss in detail the categorization of each waste, the properties that render each waste "hazardous," and produce all documents relating to this Interrogatory.

40. All entries are industrial waste. Any approval prior to November 19, 1980 was not subject to RCRA so the determination as to whether a waste was a RCRA hazardous waste was not applicable. The burden of determining whether a waste is RCRA hazardous, or not, is on the generator.

41. Admit or deny that a Special Permission Letter which grants the right to dispose of a particular waste at a given rate per unit of time (e.g. 40 cubic yards per week) remains in effect until the permission expires of its own terms or until the State takes further action regarding said permission. If Respondent denies this statement, then discuss in detail the ways such a Special Permission Letter becomes ineffective and invalid. Produce documents relating to this Interrogatory.

41. Admit.

42. For each waste set forth in the chart in Interrogatory 39 above, discuss in detail the reasons why GDL cannot and should not continue accepting such wastes; the potential risk to the environment and health of the citizens of Indiana associated with continued acceptance of each such waste in like quantities at GDL; why disposal of such waste now is denied while it was previously permitted; and produce all documents relating to this Interrogatory.

42. Fly ash, aluminum dross, water and vegetable oil, herbicide, oil wastes, filter cake/kiln scrubber mud, API separator bottoms, lime sludge, filter cake scrubber mud, activated biological sludge, calcium sulfate, lime waste, Youngstown oil sludge, gypsum wastes, calcium carbonate, paint sludges, corn starch and carbon filters, lime slurry, neutralized sludges, and dripolene are not acceptable at GDL because of their potential for adding free liquids to the landfill, generation of leachate and other concerns of ground and water contamination detailed in the reply to Interrogatory 3(d), and because the facility does not meet the facility criteria stated in the reply to Interrogatory 39(f).

Calcium carbonate, although inert, can add free liquids to the facility if in sludge form, and if dry, is an air pollution or nuisance problem if improperly disposed of.

Asbestos, pipe insulating asbestos waste, asbestos contaminated material and asbestos paper, are a significant health hazard. Special safeguards must be taken to landfill asbestos wastes so they cannot become airborne. Because of GDL's inconsistent operating record and other considerations under the policy stated in the reply to Interrogatory 39(f), the Board does not think it is prudent to further allow the facility to accept such wastes.

Furnace brick, pallets, and metal shavings, are not normally considered special or hazardous wastes under 320 IAC 5 and would be acceptable at GDL unless they are associated with other wastes which have environmental, health or nuisance impacts. However, in this case, the metal shavings were associated with over 90% liquids which rendered it unsuitable for disposal at GDL.

The reason why wastes previously approved are no longer acceptable now, is because the Board's policy regarding acceptance of industrial waste has become more stringent.

43. Have any state inspections of GDL revealed improper disposal practices relating to the disposal of each waste listed in the chart in Interrogatory 35 above? If so, discuss in detail the alleged impoper practices, the dates on which these improper practices were observed, the potential environmental problems associated with said practices, and produce all documents relating to this Interrogatory.

43. Yes. See inspection reports dated 3/15/78, 5/9/78, 11/30/78, 10/30/79, 11/14/80, 8/20/81, with reference to answers to Interrogatories

3(b), 3(c) and 3(d) regarding environmental, health, safety, and nuisance concerns.

44. GDL received permission to accept the following listed wastes:

Waste Type	Permission Letter Date	Amount Allowed
API Separator Bottoms	6/3/77	200 cubic yards
Paint Sludges	4/12/76	25 cubic yards
Solid Corn Starch	2/20/76	Unspecified
Carbon Filters from Corn Syrup Filtering Process	2/20/76	Unspecified
Lime Sludges	6/1/77	80,000 gallons per month
Lime Waste	3/14/77	80,000 gallons per month
Calcium Carbonate	10/4/76	30 cubic yards per day
Lime Sludge	1/30/76	1/500 to 5,000 gallons per week
Activated Biological Sludge	4/25/77	Unspecified
Calcium Sulfate	3/14/77	1.5 tons per day
Gypsum Wastes	10/7/76	Unspecified

For each of the above-mentioned wastes, answer the following questions:

(a) Admit or deny that permission was received by GDL to receive this waste.

44. (a) Admit.

(b) Is each waste listed an industrial waste, a RCRA hazardous waste, or both? Cite the authority for, and the regulations supporting, this categorization.

(b) Each of the wastes listed in Item 39 is, under the terms of Petitioner's Interrogatories, an industrial waste, the disposal of which has been approved on a case-by-case basis under 32D IAC 5-5-14. Under the RCRA rule, 32D IAC 4-3-1 (40 CFR 261.3), any of those wastes could be RCRA hazardous wastes if they:

(1) exhibited a characteristic of hazardous waste under 40 CFR 261.21 through and including 40 CFR 261.24; or

(2) were, or were mixed with, a waste listed under 40 CFR 261.31 through and including 40 CFR 261.33.

Since those rules were promulgated by EPA on May 19, 1980, after the dates of the permissions, there was no opportunity to ascertain at the time whether those wastes were RCRA wastes.

(c) Admit or deny that the above approvals to accept each waste listed were given on a continuing basis? If you deny this statement, discuss your response in detail.

(c) Deny. Lime waste approved on 3/14/77 was a temporary approval and was replaced by the lime sludge approval dated 6/1/77. The

list contains inaccuracies concerning periods of time, i.e., "API Separator Bottoms 6/3/77 200 cubic yards/" year.

(d) For each waste identified above, discuss in detail the anticipated adverse environmental impacts of continued disposal of these materials at GDL.

(d) The adverse environmental impacts would be as outlined in answer to Interrogatory 10 (g).

(e) In the past, have inspections revealed any improper dumping practices relating to the disposal of these wastes identified above? If so, discuss in detail the specific instances and problems, give the dates of the inspections, and produce all documents relating thereto.

(e) No, but there are no reports that indicate an inspector has witnessed the disposal of those materials at the site.

(f) Discuss in detail the State's reasons for denying approval to Gary Landfill to accept each waste listed above in the future?

(f) As outlined in the answer to Interrogatory 39(f), the determination of whether special wastes may be deposed of at a particular facility is based on a two-pronged test: (1) whether the facility is in a good geological setting and whether it has a good operational history; and (2) the characteristics of the waste. Because of the poor geological setting at GDL coupled with inadequate construction of the facility and the low percentage of acceptable inspections during the past two years, GDL is categorically an unacceptable facility for industrial (special or hazardous under 320 IAC 5) wastes including all the wastes specified in this Interrogatory.

E. MISCELLANEOUS:

45. What specific corrective actions do you contend are necessary to place the landfill in compliance with the applicable state laws and regulations and to enable GDL to accept hazardous and/or industrial wastes?

45. There are no corrective actions which could be applied to GDL to enable that facility to accept hazardous and/or industrial wastes.

46. Identify each person the State plans to call as a witness at the hearing of this matter, each person's address and telephone number (business or personal), and state in reasonable detail the anticipated testimony of each.

46. George Oliver
Indiana State Board of Health
1330 West Michigan Street
Indianapolis, IN 46206
317/633-0213

Inspection of site, review of construction plans, approvals for special waste.

Bruce Palin
Indiana State Board of Health
1330 West Michigan Street
Indianapolis, IN 46206
317/633-0203

Inspection of site, review of construction plans.

Karyl Schmidt
Indiana State Board of Health
1330 West Michigan Street
Indianapolis, IN 46206
317/633-0197

Geology of site, review of construction plans, and monitoring wells.

Stuart Miller
Indiana State Board of Health
1330 West Michigan Street
Indianapolis, IN 46206
317/633-0742

Inspection of site

Steve Wakefield
Indiana State Board of Health
1330 West Michigan Street
Indianapolis, IN 46206
317/633-0815

Previous Hazardous Waste Representative

Ted Warner
Indiana State Board of Health
1330 West Michigan Street
Indianapolis, IN 46206
317/633-8525

Current Hazardous Waste Representative

Joseph L. Tite
815 Franklin Square
P. O. Box 366
Michigan City, IN 46360
219/872-3522

Construction plans and techniques

47. Produce all inspection reports of, and Special Permission Letters granted relating to, the following landfills:

(a) the Wheeler Landfill;
(b) the City of Gary Landfill;
(c) the City of Munster Landfill; and
(d) the J&D Landfill.

47. These documents are on file in the Division of Land Pollution Control offices and are open to the public for inspection and photocopying.

48. If any of the landfills listed in Interrogatory 47 above may lawfully accept industrial wastes, discuss in detail the reasons therefor, and the specific reasons for treating any of these landfills differently from GDL.

48. Board actions regarding the facilities in Interrogatory 47 are documented in the files. The basis of Board actions authorizing disposal of industrial (special or hazardous under 320 IAC 5) wastes at those facilities would be predicated on the policy stated in the reply to Interrogatory 39(f).

Respectfully submitted,

Linley E. Pearson,
Attorney General
State of Indiana

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

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing, "Respondent's Answers to Petitioner's First Set of Interrogatories, Requests for Admissions and Requests for the Production of Documents," has been duly served upon all counsel of record listed below, bu United States Mail, First Class, postage prepaid, this 27th day of September, 1982.

John M. Kyle III
BARNES & THORNBURG
1313 Merchants Bank Building
Indianapolis, Indiana 46204

Vic Indiano
BARNES & THORNBURG
1313 Merchants Bank Building
Indianapolis, Indiana 46204

Mathew S. Scherschel
Mathew S. Scherschel
Deputy Attorney General

Office of the Attorney General
219 State House
Indianapolis, Indiana 46204
Telephone: (317) 232-6304

Reference PP
Renewal of Operational Permit
2-16-82

February 16, 1982

VIA CERTIFIED MAIL

Mr. Lawrence Hagen
Gary Development Company, Inc.
479 North Cline Avenue
P.O. Box 6056
Gary, IN 46406

Dear Mr. Hagen:

Re: Renewal of Operating Permit
for Sanitary Landfill Operation
Gary Development Landfill
Lake County

The review of information submitted in your application for renewal of an operating permit for a sanitary landfill which we received on November 17, 1980, has been completed. The sanitary landfill project, located in that part of the W 1/2 of the SW 1/4 of Section 35 lying north of the Grand Calumet River, T37N, R9W, containing approximately 61.9 acres, was issued a construction plan permit on June 21, 1973. This facility shall be operated in accordance with Rule 330 IAC 4-1, et seq. (Regulation SPC-18), and Construction Plan Permit SW 133.

The above-referenced sanitary landfill project is hereby granted a renewal of Operating Permit No. 45-2, with the following conditions:

1. That sandy, granular material under the unified soil Classification of SW and SP not be used for daily cover.

2. That the clay perimeter seal be compacted to 90% Standard Proctor density.

3. That results of compaction tests conducted on the perimeter seal be submitted to the Division of Land Pollution Control staff within 15 days of completion of the tests.

4. That after each section of leachate collection pipe is installed, it be inspected by a Division of Land Pollution Control staff member before it is covered.

5. That the discharge of water from the site to the Grand Calumet River or other waters of the State of Indiana shall not occur except in conformity with an approved NPDES permit.

6. That the seepage collector pond detailed on Page 7 of the Engineering Plan not be installed unless a seepage problem is identified. If a seepage problem is identified, a temporary collector pond must be located as close as possible to the area until seepage is properly sealed.

7. That the dike between the Grand Calumet River and the landfill be increased in elevation to 589.7 MSL.

8. That the four on-site monitoring wells be sampled on a quarterly basis. The sampling months are January, April, July, and October with samples to be taken and analyzed at the end of each of these months and results submitted by the end of the following month. Parameters to be tested include Chloride, Chemical Oxygen Demand, Total Hardness, Total Iron, and Total Dissolved Solids.

9. That hazardous waste as defined in 330 IAC 4-2-1 not be accepted at this site after 60 days from date of receipt of this letter. All current hazardous waste approvals for this site will be considered void at that time.

If you, as applicant, find that the terms and conditions of this permit are objectionable, you may petition for a hearing before the Environmental Management Board within fifteen (15) days after the date of receipt of this permit in accordance with Indiana Code 13-7-10-4(a).

If you have any questions regarding this matter, please contact Mr. Mark Richards of the Division of Land Pollution Control at 317/633-0657.

The operating permit is enclosed. Please post the permit and this letter in a conspicuous location at the site.

Very truly yours,

Ralph C. Pickard
Technical Secretary

MAR/tr
Enclosure
cc: City of Gary Health Department
Attn.: Dr. Earl Caldwell
bcc: Approval Book
Mr. George Oliver
tr 0928m 2/4/82

Ren. OPP & Iss. Amend. CPP SW 133/Gary

SENDER: Complete items 1, 2, and 3. Add your address in the "RETURN TO" space on reverse.

Day, L. F. Lake Co.
rk

1. The following service is requested (check one.)
- [X] Show to whom and date delivered
- [ ] Show to whom, date and address of delivery ____¢
- [ ] RESTRICTED DELIVERY
  Show to whom and date delivered ____¢
- [ ] RESTRICTED DELIVERY.
  Show to whom, date, and address of delivery $____

(CONSULT POSTMASTER FOR FEES)

2. ARTICLE ADDRESSED TO: 66-01
Mr. Lawrence Hagen
Gary Development Company, Inc.
479 North Cline Avenue
P. O. Box 6056
Gary, IN 46406

3. ARTICLE DESCRIPTION:
REGISTERED NO. | CERTIFIED NO. 534639 | INSURED NO.

(Always obtain signature of addressee or agent)

I have received the article described above.
SIGNATURE [ ] Addressee [ ] Authorized agent

DATE OF DELIVERY 2-22-82

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE:

CLERK'S INITIALS

RETURN RECEIPT REQUESTED, INSURED AND CERTIFIED MAIL

☆GPO : 1979-300-419

February 16, 1982

VIA CERTIFIED MAIL

Mr. Lawrence Hagen
Gary Development Company, Inc.
479 North Cline Avenue
P.O. Box 6056
Gary, IN 46406

Dear Mr. Hagen:

Re: Issuance of Amendment to Construction Plan Permit SW 133, Gary Development Landfill, Lake County

You are hereby notified that the Technical Secretary of the Environmental Management Board approved the amended plans and specifications for the above-referenced landfill project on this date.

The project consists of constructing a leachate collection system and perimeter barrier seals to prevent leachate migration from the site. The proposed final topography has been modified to increase landfill capacity. The landfill is located in that part of the W 1/2 of the SW 1/4 of Section 35 lying north of the Grand Calumet River, T37N, R9W, and contains approximately 61.9 acres.

The amendment to Construction Plan Permit SW 133 is hereby approved with the following conditions:

1. That sandy, granular material under the unified soil Classification of SW and SP not be used for daily cover.

2. That the clay perimeter seal be compacted to 90% Standard Proctor density.

3. That results of compaction tests conducted on the perimeter seal be submitted to the Division of Land Pollution Control staff within 15 days of completion of the tests.

4. That after each section of leachate collection pipe is installed, it be inspected by a Division of Land Pollution Control staff member before it is covered.

5. That the discharge of water from the site to the Grand Calumet River or other waters of the State of Indiana shall not occur except in conformity with an approved NPDES permit.

6. That the seepage collector pond detailed on Page 7 of the Engineering Plan not be installed unless a seepage problem is identified. If a seepage problem is identified, a temporary collector pond must be located as close as possible to the area until seepage is properly sealed.

7. That the dike between the Grand Calumet River and the Landfill be increased in elevation to 589.7 MSL.

8. That the four on-site monitoring wells be sampled on a quarterly basis. The sampling months are January, April, July, and October with samples to be taken and analyzed at the end of each of these months and results submitted by the end of the following month. Parameters to be tested include Chloride, Chemical Oxygen Demand, Total Hardness, Total Iron, and Total Dissolved Solids.

9. That hazardous waste as defined in 330 IAC 4-2-1 not be accepted at this site after 60 days from date of receipt of this letter. All current hazardous waste approvals for this site will be considered void at that time.

If you, as applicant, find that the terms and conditions of this permit are objectionable, you may petition for a hearing before the Environmental Management Board within fifteen (15) days after the date of receipt of this permit in accordance with Indiana Code 13-7-10-5(b).

If you have any questions regarding this matter, please contact Mr. Mark Richards of the Division of Land Pollution Control at 317/633-0657.

Very truly yours,

Ralph C. Pickard
Technical Secretary

MAR/tr

cc: City of Gary Health Department
Attn.: Dr. Earl Caldwell
bcc: Approval Book
Mr. George Oliver
tr 0929m 2/4/82

Reference QQ
Appealing the Operational Permit and Amendment to Construction Plan Permit
3-8-82

LAW OFFICES OF
TERRY K. HIESTAND
P. O. BOX 555
CHESTERTON, INDIANA 46304

Certified

MAR 11 10 25 AM '82
DIV. OF LAND POLLUTION CONTROL
STATE BOARD OF HEALTH

TERRY K. HIESTAND
GREGORY T. BABCOCK

117 BROADWAY
219/926-2188

March 8, 1982

Environmental Management Board
State of Indiana
1330 West Michigan Street
P.O. Box 1964
Indianapolis, Indiana 46206

RE: Renewal of Operating Permit for Sanitary Landfill Operation, Gary Development Landfill, Lake County
and
Issuance of Amendment to Construction Plan Permit SW 133, Gary Development Landfill, Lake County

Gentlemen:

With regard to the above matters, I have been retained by the applicant, Gary Development Company, Inc., to appeal the terms and conditions of the above renewal and approval of amended plans and specifications, as outlined in your letters dated February 16, 1982, and received by my client on February 22, 1982.

Please construe this letter as my client's petition for a hearing before your Board pursuant to Indiana Code, I.C. 13-7-10-5 (b).

It appears that the terms and conditions attached to each of the above approvals are identical. As stated, my client will not be able to comply with those conditions, and, unless relief can be obtained, my client will have to cease further operations.

Please advise the writer at such time as a hearing has been scheduled; in the meantime, my client and I would welcome the opportunity to meet with representatives of your staff for the purpose of exploring alternate conditions with them and further explaining our objections to the conditions as stated. Should you have any questions regarding the status of this matter in the meantime, please do not hesitate to contact me.

Very truly yours,

LAW OFFICES OF TERRY K. HIESTAND

Terry K. Hiestand

Terry K. Hiestand
Attorney at Law

TKH/jej
cc: Mr. Lawrence Hagen (Gary Development Company, Inc.)
CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Reference RR
IDEM Office Memorandum Regarding The
Appealing the Operational Permit and Amendment to Construction Plan Permit
4-19-92

STATE OF INDIANA

ENVIRONMENTAL MANAGEMENT BOARD

INDIANAPOLIS, 46206

1330 West Michigan Street
P.O. Box 1964

April 19, 1982

TO: Hon. Linley Pearson
Attorney General

Attention: Brenda Rodeheffer
Coordinator, Environmental Law Section

FROM: Ralph C. Pickard
Technical Secretary

SUBJECT: Request for Representation
Gary Development Landfill
Lake County

The Gary Development Landfill has been issued an amendment to its construction permit and a renewal of its operating permit, both with conditions. Pursuant to IC 13-7-10-5(b), the Gary Development Company, Inc., has appealed these conditions and request a hearing on this matter. See attached summary and copy of their request. Consequently, in accordance with the authorization granted the Technical Secretary by the Environmental Management Board, a hearing officer has been appointed to schedule a hearing date for this matter.

It is hereby requested that you appoint an attorney to represent the staff of the Division of Land Pollution Control in the proceedings. Please contact Mr. William Morgan of the Facility Inspection Section or Mr. Dan Magoun so that a meeting may be scheduled to further discuss this matter. Enclosed are copies of relative material in this matter.

SM/jb
Enclosure
cc: Wayne Penrod
Dan Magoun

STATE BOARD OF HEALTH

INDIANAPOLIS

OFFICE MEMORANDUM

DATE: April 19, 1982

TO: Ralph C. Pickard, Technical Secretary
Environmental Management Board

THRU:

FROM: William Morgan
Facility Inspection Section

SUBJECT: Request for Hearing
Gary Development Landfill
Lake County

Gary Development Landfill has been issued an amendment to its construction permit and a renewal of its operating permit, both with conditions. They have since appealed these conditions and request that a hearing be held on this matter. A complete summary is attached along with a copy of their request.

Therefore, pursuant to the authority delegated to you by the Environmental Management Board, it is requested that a hearing officer be appointed so that he may establish a time and place for a hearing to resolve this matter.

SM/jb
Attachments
cc: Wayne Penrod
Dan Magoun

STATE BOARD OF HEALTH

INDIANAPOLIS

make a file

OFFICE MEMORANDUM

DATE: April 19, 1982

TO: James M. Garrettson
Water Pollution Control

THRU:

FROM: Ralph C. Pickard, Technical Secretary
Environmental Management Board

SUBJECT: Assignment as Hearing Officer

This is to advise you that you have been appointed by me to serve as hearing officer on behalf of the Environmental Management Board in the following matter:

Appeal of Permit Conditions by Gary Development Landfill
Lake County

A copy of the technical staff's request for hearing is enclosed for your information. Please have a Cause No. assigned, schedule times and places for a prehearing conference and hearing in this matter, and prepare the appropriate notice for my signature.

SM/jb
Enclosure

Summary
Request for Hearing
Gary Development Landfill
Lake County

On June 21, 1973, Oral H. Hert, Technical Secretary, approved the construction of a sanitary landfill located on Cline Avenue, north of the Grand Calumet River within the SW¼ of Section 35, T37N, R9W, in Lake County containing approximately 62 acres.

On February 20, 1975, Oral H. Hert, Technical Secretary, approved the operation of this site and issued Operating Permit No. 45-2.

On March 2, 1977, a prehearing conference was held with Mr. Larry Hagen of the above-mentioned facility to prepare an Agreed Order for the site to submit modified plans, correct leachate discharges, and discontinue accepting unapproved industrial waste. Mr. Hagen subsequently refused to sign this Agreed Order.

On June 15, 1979, another prehearing conference was held in East Chicago. At this time another Agreed Order was established for continued operation of this site and Mr. Hagen indicated he would sign this one. During this two year period, some hearings were held with Mr. Hagen but were continued due to attorney changes and time conflicts.

On May 20, 1980, the Stream Pollution Control Board adopted the previously negotiated Agreed Order, Cause No. B-406. The Agreed Order specified that this would be a provisional operating permit for one year from date of approval. It also specified many conditions for operation.

On February 16, 1982, an amendment to the Construction Plan Permit SW 133 was issued with conditions and on that same date a renewal of Operating Permit No. 45-2 was issued with conditions also. A copy of each letter is attached.

On March 11, 1982, the Board received a request from Mr. Hagen's attorney, Terry K. Wiestand, appealing the conditions of the operating permit renewal letter and the construction plan amendment letter both of February 16, 1982. This letter also requested that a hearing be held pursuant to IC 13-7-10-5(b).

Recommendation: Staff recommends that a hearing officer be appointed and allowed to schedule the time and date of a hearing to resolve this matter.

SM/jb
Attachment

Reference SS
Petitioner's answers to Respondents First set on Interrogatories
12-10-82

Gary's answers to State Questions

File

BARNES & THORNBURG

1313 MERCHANTS BANK BUILDING
INDIANAPOLIS, INDIANA 46204

INDIANA STATE BOARD OF HEALTH DIVISION OF WATER POLLUTION CONTROL

TELEPHONE (317) 236-1313 TELECOPIER (317) 261-9433

TWX 810-341-3427 JCH ATTYS IND

SIXTH FLOOR, 1ST SOURCE BANK BUILDING
SOUTH BEND, INDIANA 46601
(219) 233-1171

FIRST NATIONAL BANK BUILDING
301 SOUTH MAIN STREET, SUITE 305
ELKHART, INDIANA 46516
(219) 293-0681

SUITE 200
2000 L STREET, N.W.
WASHINGTON, D.C. 20036
(202) 296-2830

JERRY D. BELKNAP
ROBERT S. BENOIT
LOUIS A. BIONDARK
JOHN W. BOUGHTON
WARREN E. BOZAHL
WARREN A. BZAHL
JOHN L. CAREY
GEORGE J. CAZAS
THOMAS L. MURRAY
JOHN R. HARMAN
HOWARD J. COFIELD
RICHARD M. TRECKELO
EUGENE C. MILLER, JR.
WILLIAM J. REINKE
RICHARD E. DEER
EDWARD J. GRAY
ROBERT E. HIGHFIELD
DANIEL W. RUDY
JACK C. DUNFEE, JR.
HENRY J. PRICE
HERBERT C. SNYDER, JR.
JAMES A. MCDERMOTT
SHIRLEY A. SHIDELER
ROBERT H. REYNOLDS
CHARLES E. BRUCSS
WILLIAM R. COFFEY
BRUCE R. BANCROFT
JOHN T. MUDVIHILL
FRANKLIN A. MORSE II
STEPHEN A. SCALL
GORDON S. ESLICK
RICHARD E. STEINERONN
JOHN A. BURGESS
H. KENT HOWARD
ROBERT P. JOHNSTONE
TOM CHARLES HUSTON
JAMES A. STRAIN
GEORGE H. BAKER
TOM BUEAK
R. MICHAEL PARKER
NELSON J. MOBEL, JR.
ROGER W. BENKO
DAVID R. MCTON
BRIAN J. LAKE
BRYAN O. WABLER
DANIEL H. FITZGIBBON
STEPHEN K. SMITH
RICHARD W. MORGAN
MICHAEL R. FRUCHWALD
EDWARD O. DELANEY
GYM H. LOWELL
SAMUEL B. THOMPSON
BRUCE R. HARP
DONALD E. KNEBEL
WAYNE C. KREUSCHER
KRISTIN G. FRUEHWALD
DANIEL W. MCGILL
KENT E. AGNESS
MICHAEL R. CONNER
CLAUDIA V. SWHIER
ROBERT K. BELLAMY
CATHERINE L. BRIDGE
RICHARD D. CONARD

OF COUNSEL
ALAN W. BOYD
CHARLES W. WELLS
THOMAS H. BEARDSLEY
JAMES J. THORNBURG
FREDERIC D. ANDERSON
LESTER IRONS
LESTER M. KONDER
DONALD O. EVENSON *
THOMAS P. JENKINS
EVENET R. SMITH
JERRY E. HYLAND
DAVID H. BADGER
JOHN J. METTS

LARRY J. STROBLE
MICHAEL ROSIELLO
LYNN BRUNDAGE
STEPHEN W. LEE
DAVID A. HAIST
STANLEY C. FICKLE
WILLIAM L. KOHM
A. JAMES TICKAWDSON
ERNEST J. SZARWARK
PAUL E. BECHER
JAMES C. MAHONEY
DAVID M. POWLEN
EDWIN D. WAINSCOTT
MICHAEL P. LUCAS
DAVID L. SWIDER
RENEE R. MAWHINNEY
JOHN P. GREELEY
MARCUS B. CHANDLER
DAVID T. SNIVELY
JOHN J. KISH
DOUGLAS P. LONG
STEPHEN L. SMITH
JOHN M. KYLE III
JAMES A. COLES
MILDRED L. CALHOUN
JOHN C. ROTHHAAR
DOUGLAS K. GIEZERLY
SANDRE J. LONG
DOUGLAS E. STARKEY
ROBERT J. SMITH, JR.
CONNIE M. MCKEAN
SANDRA L. HECKE
BRUCE B. MAHR
JEFFREY J. TONNER
GREGORY L. KELLY
PATRICK J. O'NEIL
MARK R. WENZEL
JAMES B. LOOIZENS
NANCY L. MARSHALL
ANNE N. DEPREZ
RICHARD A. COHEN
DONALD E. C. LEIGHT
E. VICTOR INDIANO
ALAN A. LEVIN
FRANK SULLIVAN, JR.
KENNETH R. PETRINI
KENNETH H. INGREEP
KATHLEEN K. BRICKLEY
ALAN K. MILLS
JOSEPH W. REGONE

* NOT ADMITTED IN INDIANA

TO CALL WRITER DIRECT
(317) 261-9284

December 10, 1982

Mr. James M. Garrettson
Hearing Officer
Environmental Management Board
1330 W. Michigan Street
Indianapolis, IN 46206

Re: Gary Development Landfill Permit

Dear Jim:

Please find enclosed our "Agreed Extension Of Time For Answering Requests For Admissions And Requests For Production Of Documents" and the "Order". Please call me if you have any questions.

Sincerely,

John M. Kyle III

John M. Kyle, III

JMK/cs

Enclosures

STATE OF INDIANA)		BEFORE THE ENVIRONMENTAL MANAGEMENT
) SS:		
COUNTY OF MARION)		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.	)	

AGREED EXTENSION OF TIME
FOR ANSWERING REQUESTS FOR ADMISSIONS
AND REQUESTS FOR PRODUCTION OF DOCUMENTS

Comes now Petitioner, by counsel, and shows the Hearing Officer that the parties have reached an agreement in this matter and Petitioner therefore agrees to an indefinite extension of time for Respondent to answer Petitioner's Request For Admissions and Requests For The Production Of Documents (Second Set). Petitioner expressly reserves the right to reinstate these requests in the event that an Agreed Order is not signed by the parties, signed by the Hearing Officer, or approved by the Environmental Management Board.

WHEREFORE, Petitioner requests that the Hearing Officer grant an indefinite extension of time in which Respondent has to respond to Petitioner's Requests For Admissions and Requests For The Production of Documents (Second Set), and for all other necessary and appropriate relief.

Respectfully submitted,

John M. Kyle III

John M. Kyle, III

E. Victor Indiano

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing "AGREED EXTENSION OF TIME FOR ANSWERING REQUESTS FOR ADMISSIONS AND REQUESTS FOR PRODUCTION OF DOCUMENTS" has been served on the Respondent this 10th day of December, 1982, by United States mail, first-class, postage prepaid.

John M. Kyle, III

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.

THE ENVIRONMENTAL MANAGEMENT BOARD OF THE STATE OF INDIANA,

Respondent.

CAUSE NO. N-53

ORDER

Comes now Petitioner, by counsel, and files an "Agreed Extension Of Time For Answering Requests For Admissions And Requests For Production Of Documents" in the following words and figures, to wit:

[N.I.]

And the Hearing Officer being duly advised hereby ORDERS that Respondent shall not be required to respond to Petitioner's "Requests For Admisssions And Requests For The Production Of Documents (Second Set)", until further order of the Hearing Officer.

James Garrettson
Hearing Officer

Notice to:

John M. Kyle, III
BARNES & THORNBURG
1313 Merchants Bank Building
Indianapolis, IN 46204

Mathew S. Scherschel
Deputy Attorney General
Counsel for Environmental Management Board of the State of Indiana
Room 219, State House
Indianapolis, IN 46204

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

BEFORE THE ENVIRONMENTAL MANAGEMENT BOARD OF THE STATE OF INDIANA

IN THE MATTER OF
GARY DEVELOPMENT COMPANY, INC.,

Petitioner,

v.

THE ENVIRONMENTAL MANAGEMENT BOARD OF THE STATE OF INDIANA,

Respondent.

CAUSE NO. N-53

PETITIONER'S ANSWERS TO RESPONDENTS FIRST SET OF INTERROGATORIES, REQUESTS FOR ADMISSIONS AND REQUESTS FOR THE PRODUCTION OF DOCUMENTS

Comes now the Petitioner, Gary Development Company, Inc., by counsel, and states the following responses and objections to Respondent's First Set of Interrogatories, Requests for Admissions and Requests for the Production of Documents.

A. OWNERSHIP OF LANDFILL AND STATUS OF CORPORATION

INTERROGATORY NO. 1. The original application for a construction permit for the Petitioner's site indicates that Gary Land Development Company, Inc., was the owner.

(a) Discuss in detail the relationship between said company and Gary Development, Inc. (hereafter referred to as "Petitioner").

(b) Identify the title holder for the real property for the subject landfill site. Describe in detail Petitioner's relationship to the title holder.

(c) Is Petitioner a corporation currently in good standing with the State of Indiana and supply a certificate stating such from the Secretary of State.

(d) List all corporate officers for Gary Development, Inc., including title, name, and address.

(e) Discuss in detail Larry Hagen's authorities, duties and responsibilities for the Petitioner.

(f) Produce all documents relating to your responses to the questions and requests for admissions contained in Interrogatory 1 and all subparts hereto.

ANSWER. (a) "Gary Land Development Company, Inc." and "Gary Development, Inc." are both misnomers foisted upon Gary Development Company, Inc. through clerical error.

(b) Gary Development Company, Inc. Petitioner and Gary Development Company, Inc. are the same legal entity and title holder to the property.

(c) Yes. The Certificate of Good Standing is a matter of public record and is as easily, if not more easily, obtainable by Respondent as by Petitioner.

(d) William M. Nanini
President and Treasurer
479 North Cline Avenue
P. O. Box 6056
Gary, Indiana

Henry Leyva
Secretary
479 North Cline Avenue
P. O. Box 6056
Gary, Indiana

Lawrence H. Hagen
Executive Vice President
479 North Cline Avenue
P. O. Box 6056
Gary, Indiana

(e) Mr. Hagen is responsible for overall construction and operation of the Gary Development Landfill.

(f) The deed for the property is recorded in the Lake County Recorder's office, is a matter of public record, and is available for inspection during normal business hours. Petitioner agrees to make any other specified documents available for inspection at a mutually agreed upon time at the Gary Development Company, Inc., offices and at the offices of Mr. James Nannini, the company's accountant. Mr. Nannini's offices are at 7703 Sussex Creek Drive, Darien, Illinois 60559.

B. DAILY OPEARTION OF LANDFILL

INTERROGATORY NO. 2. According to the construction plans the Petitioner's landfill operating hours, during which refuse is accepted for disposal, are from 7:00 a.m. to 4:00 p.m., Monday through Friday, and 7:00 a.m. to 11:00 a.m. on Saturday.

(a) Admit or deny that these are the actual hours of operation. If the response is one of denial list the actual operating hours.

(b) Admit or deny that Mr. Hagen is on-site during the outlined operating hours.

(c) If the response to Interrogatory 2(b) is one of denial give the name, address and phone number of the person responsible for the operation of the site during Mr. Hagen's absence.

(d) Admit or deny that waste is disposed of at the site after the designated operating hours.

(e) If the answer to Interrogatory 2(c) is admit, discuss those situations that result in after hour disposal and include a description of the waste and its quantity, the name of the waste generator, and the name of the hauler of the waste.

(f) Admit or deny that Mr. Hagen, or his designee, inspects the landfill at the end of each operating day to

determine that all refuse has been covered with a minimum of six inches of cover soil.

(g) Admit or deny that all solid waste is covered with a minimum of six inches of soil at the end of each operating day.

(h) Admit or deny that fly ash or shredder material has been used in lieu of daily soil cover.

(i) If your response to any of the above requests for admissions is one of denial, explain in detail the reason for your denial.

(j) Is there a security guard present on-site after operating hours? If so, what is his name, address, and telephone number.

(k) Is a daily operational log or record kept on any of the following:

(i) Amount of refuse accepted for disposal.

(ii) Results of inspections of the facility by the operator.

(iii) Equipment utilized on site.

(iv) Equipment breakdowns.

(v) Weather conditions.

(vi) Rental of back up equipment.

(vii) Construction activities.

(l) If the answer to Interrogatory 2(j) is one of admission produce a copy of the log or record.

ANSWER. (a) Deny. The above outlined hours are the landfill's normal operating hours. There are occasions when the landfill has been closed during these hours. There are also occasions when waste has been accepted at times other than normal operating hours.

(b) Deny, although Mr. Hagen is frequently on-site.

(c) Lawrence Hagen, Jr.
479 North Cline Avenue
P. O. Box 6056
Gary, Indiana
219-944-7858

(d) Admit to the extent that waste is sometimes disposed of at times other than normal operating hours.

(e) Not applicable. No admission was requested in Interrogatory 2(c).

(f) Admit.

(g) Admit.

(h) Deny.

(i) With respect to Interrogatory 2(a), see the answer to Interrogatory 2(a). With respect to Interrogatory 2(b), Mr. Hagen is not on site during lunch periods, vacations, sick days and other times when his presence is required elsewhere. With respect to Interrogatory 2(h), shredder material has been used in addition to daily cover soil, to serve as a traction aid for vehicles driving on the landfill.

(j) Yes. The security guards currently employed by Gary Development Company, Inc. include:

Bud Martin
479 North Cline Avenue
Avenue P. O. Box 6056
Gary, Indiana
219-885-9481

Brian Boyd
479 North Cline
P. O. Box 6056
Gary, Indiana
219-885-9481

William Essary
479 North Cline Avenue
P. O. Box 6056
Gary, Indiana
219-885-9481

Ray Burton
473 North Cline Avenue
P. O. Box 6056
Gary, Indiana
219-885-9481

(k) (i) Yes.

(ii) No.

(iii) No.

(iv) Yes, to some extent.

(v) No.

(vi) Yes, to some extent.

(vii) No.

(l) Petitioner has given a complete answer to No. 2(j).

INTERROGATORY 3. Admit or deny that the following inspection reports were signed by an authorized representative of Gary Development, Inc.

(1) June 19, 1980

(2) July 25, 1980

(3) September 3, 1980

(4) November 14, 1980

(5) January 8, 1981

(6) April 21, 1981

(7) August 20, 1981

(8) October 20, 1981

(9) January 8, 1982

(10) August 10, 1982

ANSWER. (1) Admit, although the mere fact of signing the report by an authorized representative of Petitioner does not necessarily indicate the signatory's, or Petitioner's agreement with the conclusions of the report itself.

(2) Admit, with the same caveat mentioned in (1) above.

(3) Deny.

(4) Admit, with the same caveat mentioned in (1) above.

(5) Admit, with the same caveat mentioned in (1) above.

(6) Admit, with the same caveat mentioned in (1) above.

(7) Admit, with the same caveat mentioned in (1) above.

(8) Admit, with the same caveat mentioned in (1) above.

(9) Admit, with the same caveat mentioned in (1) above.

(10) Admit, with the same caveat mentioned in (1) above.

C. CONSTRUCTION PLANS

INTERROGATORY NO. 4. In reference to the approved 1973 construction plans for the landfill site:

(a) Admit or deny that the external dewatering system has not been constructed around the entire site.

(b) Admit or deny that a flow meter was not provided on the discharge to the Grand Calumet River.

(c) Admit or deny that a water quality monitoring program was not established for the discharge to the Grand Calumet River.

(d) Admit or deny that a clay wall has not been constructed around the entire site.

(e) Admit or deny that a leachate collection system as illustrated in Exhibit No. 1 of the plans has not been

constructed under the eastern portion of the site that has been filled.

(f) Admit or deny that leachate collected on-site has not been taken to a wastewater treatment plant.

(g) Admit or deny that a gas venting system has not been installed on-site.

(h) If your response to any of the above requests for admission is one of denial, explain in detail the reason for your denial.

(i) Produce all documents relating to your responses to the questions and requests for admissions contained in Interrogatory 3 and all subparts hereto.

ANSWER. Objection. The only matters relevant to Respondent's case are alleged violations by Petitioner of applicable requirements since May 20, 1980, without waiver of, and as limited by this objection, which applies to all subparts of No. 4, Petitioner gives the following responses:

(a) Admit, although this became unnecessary when, with the state's knowledge and acquiescence, actual construction of the site deviated from the plans. The required dewatering system was constructed around that portion of the site that was being filled.

(b) Admit.

(c) Deny.

(d) Admit, although this became unnecessary when, with the state's knowledge and acquiescence, actual construction of the site deviated from the plans. The required clay wall was

constructed around that portion of the site that was being filled.

(e) Deny.

(f) Admit, although this became unnecessary when, with the state's knowledge and acquiescence, actual construction of the site deviated from the plans. As Respondent knows, leachate that is generated is collected and trapped on-site; is not allowed to go off-site; and is utilized, with Respondent's express authorization, in the Admixture operations on-site.

(g) Deny.

(h) With respect to No. 4(c), a water quality monitoring program was established. With respect to No. 4(e), a leachate collection system, as shown in the 1973 plans, was established under the eastern portion of the site. With respect to No. 4(g), a gas venting system has been installed on site.

(i) Petitioner agrees to make any requested document available for Respondent's inspection at a mutually agreed upon time at the Gary Development Company, Inc., offices and at the offices of Mr. James Nannini, the company's accountant. Mr. Nannini's offices are at 7703 Sussex Creek Drive, Darien, Illinois 60559. An inspection of the landfill site will confirm the presence of the items referred to in Nos. 4(e) and 4(g).

INTERROGATORY NO. 5. The 1980 proposal to amend the Construction Plan outlines how future site construction will be

conducted in a manner different from the previously mentioned 1973 construction plan. Relative to the plan:

(a) Admit or deny that Petitioner reviewed the plan and submitted the amendment application form.

(b) The construction techniques for the berm along the west side of the site was detailed in the amendment plan. Relative to the berm which has been constructed along the west side of the site:

(i) Admit or deny that the berm is keyed into the clay in the pit bottom.

(ii) Admit or deny that the berm was constructed by placing native clay soils in maximum 12 inch layers and compacting.

(iii) Admit or deny that the berm is a minimum of 25 feet thick in the horizontal plan from top to bottom.

(iv) Admit or deny that the berm was compacted at optimum moisture content to a ninety percent maximum density as determined by the Standard Proctor Test. If your answer is one of admission provide copies of results of soil tests.

(c) Admit or deny that the Petitioner was aware of groundwater or fluids flowing into the site along the west side of the pit prior to the proposal to amend the Construction Plans.

(d) If your response to any of the above requests for admissions is one of denial, explain in detail the reason for your denial and give a detailed explanation of how the berm was constructed if different from the method described in the amendment plans.

(e) What size and type of equipment was utilized to construct the berm?

(f) Give the names, addresses, and phone numbers of equipment operators who constructed the berm.

ANSWER. (a) Admit.

(b)(i)-(iv) Objection. These requests for admissions assume that the entire berm along the west side of the site was required to be constructed in accordance with the plans approved by Respondent February 16, 1982, which assumption is contrary to law and fact, and is therefore irrelevant and an improper request for admission under the Indiana Rules of Trial Procedure.

(c) Objection. See Objection to No. 4 above. Without waiver of, and as limited by this objection, Petitioner's response is: Admit.

(d) Not applicable.

(e) B. E. 40-H Hydraulic Hoe
Catterpillar D-8 Bulldozer
Rexmod 370 Compactor

(f) Ed DeVries
479 North Cline Avenue
P. O. Box 6056
Gary, Indiana
219-944-7858

Nick DeFrank
479 North Cline Avenue
P. O. Box 6056
Gary, Indiana
219-944-7858

Larry Hagen, Jr.
See Answer to
Interrogatory 2(c) above

INTERROGATORY NO. 6. Was any registered engineer on site during construction of the berm along the west wall to observe,

review or critique said construction? If the answer is no, who was responsible for assuring the berm was constructed according to the proposed plans to amend the construction permit.

ANSWER. No to Petitioner's knowledge, this is not, and has not been, a requirement of any approved plan, permit or regulation. Larry H. Hagen, Sr. was on site from time to time to oversee the construction of the referenced berm.

D. HAZARDOUS AND SPECIAL WASTE

INTERROGATORY NO. 7. List the following information for each RCRA hazardous waste disposed of at the Petitioner's landfill since November 19, 1980 and provide a copy of the manifest form which accompanied each waste.

(a) Name or type of each specific waste and EPA Hazardous Waste Number.

(b) Generator's name and address.

(c) Name and address of hauler that transported the waste.

(d) Total quantity received to date.

(e) Copies of lab analysis of material.

(f) Date the last load of waste was received.

ANSWER. Pursuant to Ind. R. Trial P. 33(c), Petitioner agrees to make available for Respondent's inspection at a mutually agreed upon time, Petitioner's business records located at the Gary Development Co., Inc. office, 479 North Cline Avenue, Gary, Indiana, and at the office of Mr. James Nannini, 7703 Sussex Creek Drive, Darien, Illinois 60559, from which the requested information can be ascertained.

INTERROGATORY NO. 8. Admit or deny that waste from Jones and Laughlin Steel's 6-stand oil recovery unit has been disposed of at the petitioner's landfill.

ANSWER. Admit.

INTERROGATORY NO. 9. If the answer to Interrogatory 8 is one of admission, describe the physical characteristics of the waste delivered to the site.

ANSWER. The waste material is a dark colored material, varying in consistency from a semi-solid to a substantially solid material.

INTERROGATORY NO. 10. List the following information for each special waste which is a hazardous waste under the landfill regulation definition (320 IAC 5), but not a RCRA hazardous waste, which have been disposed of at the Petitioner's landfill since June 1, 1980:

(a) Name or type of waste.

(b) Generator's name and address.

(c) Name and address of hauler that transported waste.

(d) Total quantity received to date.

(e) Copies of lab analysis of waste.

(f) Date the last load of waste was received.

ANSWER. Pursuant to Ind. R. Trial P. 33(c), Petitioner agrees to make available for Respondent's inspection at a mutually agreed upon time, Petitioner's business records located at the Gary Development Company, Inc. office, 479 North Cline Avenue, Gary, Indiana, and at the office of Mr. James

Nannini, 7703 Sussex Creek Drive, Darien, Illinois 60559, from which the reqested information can be ascertained.

INTERROGATORY NO. 11. Has the following ever been disposed of at the site by dumping into pits excavated into previously filled areas of the landfill?

(a) RCRA hazardous waste

(b) Special waste

ANSWER. (a) Objection. The only matters relevant to Respondent's case are alleged violations by Petitioner of applicable requirements since May 20, 1980. Without waiver of, and as limited by this objection, the answers to both (a) and (b) are: No.

INTERROGATORY NO. 12. If the answer to Interrogatory 11 is yes, list those wastes which have been handled in the described manner and indicate the maximum amount of time that passed before the pit was filled in with refuse and covered.

ANSWER. Not applicable.

INTERROGATORY NO. 13. Admit or deny that RCRA hazardous wastes or special wastes have been disposed of at the Petitioner's site after operating hours established by the answer to Interrogatory B 2(a).

ANSWER. Objection. The request is ambiguous because it covers two separate, distinct items. Without waiver of this objection, Petitioner states that many kinds of waste have been disposed of before or after "normal" business hours. Petitioner agrees to make available for Respondent's inspection at

a mutually agreed upon time produce its business records located at the Gary Development Company, Inc. office, 479 North Cline Avenue, Gary, Indiana, and at the office of Mr. James Nannini, 7703 Sussex Creek Drive, Darien, Illinois 60559, from which the requested information can be ascertained.

E. MISCELLANEOUS

INTERROGATORY NO. 14. Were the monitoring wells on-site sampled during April of 1982? If yes, produce a copy of the test results.

ANSWER. No, but samples were taken in late June and August, 1982.

INTERROGATORY NO. 15. List the educational background of Larry Hagen including the degree or certificate conferred, the school from which the degree or certificate was conferred, and the date of conferral.

ANSWER. Graduated, 1953 Thornton Township High School, Harvey, Illinois.

INTERROGATORY NO. 16. List Larry Hagen's work experience prior to working for Gary Development, Inc. relative to the operation of solid waste disposal facilities.

ANSWER. Operator,
Active Ability, Inc.
Solid Waste Facility
17730 Chicago Avenue
Lansing, Illinois
Facility completed in 1970

Co-operator,
Chicago Hts. Solid Waste Facility
Chicago Hts., Illinois
1966 - 1968

Co-operator
Nardi and Sahia
Peatone Solid Waste Facility
Peatone, Illinois
1966 - 1969

INTERROGATORY NO. 17. Does the petitioner or Larry Hagen own or operate any other landfill sites or solid waste related facilities? If yes, list the name, address, and nature of business of the sites or facilities.

ANSWER. No.

INTERROGATORY NO. 18. Does the Petitioner provide, or if not, send its employees to, a training program of any kind, formal or informal, on operating a landfill?

(a) If so, discuss in detail the nature of such programs; and produce documentation that the current employees have completed such training.

ANSWER. As a prerequisite to being hired, all equipment operators are trained and certified by the Operating Engineers Union, Local 150.

(a) The Operating Engineers Union has training schools where the operators are trained. All operators have undergone training and apprenticeship programs, and are currently journeymen operators.

Respectfully submitted,

Petitioner, Gary Development Company, Inc.

John M. Kyle III

E. Victor Indiano

Counsel for Petitioner

Barnes & Thornburg
1313 Merchants Bank Building
Indianapolis, Indiana 46204

Lawrence H. Hagen, Sr.
Executive Vice President,
Gary Development Company, Inc.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing "Petitioner's Answers to Respondents First Set of Interrogatories" has been served on the Respondent's attorney:

Mathew S. Scherschel, Deputy Attorney General
Counsel for Environmental Management Board of
the State of Indiana
Room 219, State House
Indianapolis, Indiana 46204

by hand delivery, this 6th day of December, 1982.

John M. Kyle, III

E. Victor Indiano

E. Victor Indiano

Reference TT
Recommended Consent Decree
3-1-83

STATE OF INDIANA

ENVIRONMENTAL MANAGEMENT BOARD

INDIANAPOLIS, 46206

1330 West Michigan Street
P.O. Box 1964

March 1, 1983

VIA CERTIFIED MAIL

Mr. Lawrence Hagen
479 North Cline Avenue
P.O. Box 6056
Gary, Indiana 46406

Dear Mr. Hagen:

Re: In The Matter of
Gary Development, Inc.,
vs.
The Environmental Management Board
State of Indiana
Cause No. N-53

This is to inform you that the Indiana Environmental Management Board, at its regularly scheduled meeting of February 18, 1983, approved the Recommended Consent Decree negotiated between yourself or your representatives and members of our staff. A copy of the Final Order, executed by myself as Technical Secretary on behalf of the Board, is enclosed.

You are, no doubt, familiar with the terms of the Final Order necessary to ensure future compliance.

Very truly yours,

Ralph C. Pickard
Technical Secretary

DBH
Enclosure
cc: Lake County Health Department
Mathew Scherschel, Deputy Attorney General
John M. Kyle III
Ronald G. Blankenbaker, M.D.
Mr. Richard Shandross, U.S. EPA

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.

THE ENVIRONMENTAL MANAGEMENT BOARD OF THE STATE OF INDIANA,

Respondent.

CAUSE NO. N-53

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. 4.9×10^{-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

By John M. Kyle III
John M. Kyle III

INDIANA ENVIRONMENTAL MANAGEMENT BOARD

Technical Recommendation

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

Date: 2/16/83

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

State Form 4336

DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
INDIANAPOLIS

OFFICE MEMORANDUM

Date: July 12, 2010

To: Aunna Huber
State Cleanup Section

Thru: Steve Buckel, Chief
OLQ Chemistry Services Section
Science Services Branch

From: Kristy M. McIntire
Environmental Chemist 2
OLQ Chemistry Services Section

Fran Metcalfe
Environmental Chemist 1
OLQ Chemistry Services Section
Science Services Branch

Subject: Analytical Results for Hydraserve Evansville
Evansville, Vanderburgh County, Indiana
Site # 200708038 (L767A)
Sampled: December 29, 2010
Sample Numbers: MW-1, MW-3 through MW-11, DUP-1, Trip Blank
ESG Laboratories

The analytical results for the samples identified above have been validated according to the quality criteria contained in the Test Methods for Evaluating Solid Waste, Physical/Chemical Methods (SW-846) Third Edition, and its updates, and the Risk Integrated System of Closure (RISC) Technical Guidance Document. Based on the evaluation, it has been determined that the results are acceptable for use. Reasons that data are qualified as estimated or unusable are explained below.

General Comments:

The purpose of this event was to sample the groundwater for closure activities. The collected samples were analyzed for benzene, toluene, ethylbenzene, xylene, and methyl-tertiary butyl ether (BTEX/MTBE), polynuclear aromatic hydrocarbons (PAHs), total petroleum hydrocarbons (TPH) – gasoline range organics (GRO), TPH – extended range organics (ERO), and metals (silver, arsenic, barium, cadmium, chromium, selenium, lead, and mercury)

Sampling Quality Assurance/Quality Control

Field documentation did allow for interpretation of the data.

Field duplicate samples are used to establish the representativeness of field sampling (i.e., the homogeneity and sample variability). Field duplicates were collected from MW-6 (MW-6 and DUP-1). The field duplicate was in good agreement except for benzene. The results for benzene in groundwater are estimated.

Field blanks (trip and/or equipment) are used to identify sample contamination resulting from sampling equipment, sample containers, chemical preservatives, and the handling and transportation of samples. The trip blank was collected and nothing was detected. The

equipment blank was not required since dedicated equipment was utilized

Laboratory Quality Assurance/Quality Control

The laboratory performed all quality assurance/quality control (QA/QC) measures necessary to validate the analytical results for this sampling event. The data was determined to bevalid. Based on the validation of the analytical results, the following comments and/or qualifications are made regarding the data:

Groundwater

Volatile Organic Compounds

Samples were analyzed forVOCs by EPA Method 8021.

All QA/AC criteria were acceptable.

Polynuclear Aromatic Hydrocarbons

Samples were analyzed forPAHs by SW-846 Method 8270 SIM.

All QA/QC criteria were acceptable.

Total Petroleum Hydrocarbon – Gasoline Range Organics

Samples were analyzed forTPH-GRO by EPA Method 8015.

All QA/QC criteria were acceptable

Total Petroleum Hydrocarbon – Extended Range Organics

Samples were analyzed forTPH-ERO by SW-846 Method 8015.

All QA/QC criteria were acceptable.

Results:

The results may be found on Table 2 of the Fourth Quarter 2009 Progress Report (VFC # 54207665) dated February 11, 2010.

Conclusions:

The data are usable for the overall project goal.

State Form 4336

DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
INDIANAPOLIS

OFFICE MEMORANDUM ***Not for Public Release**

Date: July 12, 2010

To: Aunna Huber
State Cleanup Section

Thru: Steve Buckel, Chief
OLQ Chemistry Services Section
Science Services Branch

From: Kristy M. McIntire
Environmental Chemist 2
OLQ Chemistry Services Section

Fran Metcalfe
Environmental Chemist 1
OLQ Chemistry Services Section

Subject: Interpretation of Analytical Results for Hydraserve Evansville and First Quarter 2010 Corrective Action Progress Report
Evansville, Vanderburgh County, Indiana
Site # 200708038 (L767A)
VFC Document # 55969887
Sampled: December 29, 2009
Sample Numbers: MW-1, MW-3 – MW-11, DUP-1, and Trip Blank
ESG Laboratories

The analytical results for the samples identified above have been valdated according to the quality criteria contained in the Risk Integrated System of Closure (RISC) technical Guidance Document and the Test Methods for Evaluating Solid Waste, Physical/Chemical Methods (SW-846) Third Edition, and its updates. Details of the data validation can be found in the Chemistry Services Section Memorandum entitled: "Analytical Resultsfor Hydraserve Evansville", July 12, 2010. Based on the evaluation, it has been determined that the results areacceptable for the intended purpose.

Comments

1. All groundwater results were below RISC Industrial Default Closure Levels. Benzene, arsenic, and total petroleum hydrocarbons – extended range organics (TPH-ERO) were above RISC Residential Default Closure Levels (RDCLs). Detailed sample results may be found on Table 2 of the Fourth Quarter 2009 Corrective Action Progress Report. As of June 17, 2010, IDEM no longer requires TPH-ERO or TPH-gasoline range organics to be analyzed in groundwater.

2. Groundwater samples were collected from MW-1, MW-3 through MW-11 in March 2010. The results indicate that TPH-ERO and benzene were above RISC RDCLs. All results have remained consistent for the last four quarters. Therefore, it appears that closure with an environmental restrictive covenant may be acceptable.

3. Benzene results were estimated due to poor precision in the duplicate sample. However, the concentrations of benzene (9.0 and 6.7-ppb) were such that they would not exceed RISC Industrial Default Closure Level (IDCL).

*Not For Public Release (Protected Internal Communication Under IC-5-14-3-4-(b)(6) or Information Not Obtained Under Authority of, Nor Required, By State Law).

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.

THE ENVIRONMENTAL MANAGEMENT BOARD OF THE STATE OF INDIANA,

Respondent.

CAUSE NO. N-53

ORDER REDUCING TIME FOR RESPONDENT TO REPLY TO PETITIONER'S FIRST SET OF INTERROGATORIES, REQUESTS FOR ADMISSIONS, AND REQUESTS FOR PRODUCTION OF DOCUMENTS

Comes now GARY DEVELOPMENT, INC., by counsel, and files its Motion to Reduce Time for Respondent to Reply to Petitioner's First Set of Interrogatories, Requests for Admissions, and Requests for Production of Documents, or in the Alternative, Motion for Continuance, in the following words and figures, to-wit:

[H.I.];

And the Hearing Officer being duly advised hereby finds that said Motion is meritorious and that the time in which Respondent should be allowed to reply to Petitioner's First Set of Interrogatories, Requests for Admissions, and Requests for Production of Documents, should be shortened.

And the Hearing Officer being duly advised, IT IS HEREBY ORDERED that Respondent shall deliver its responses to Petitioner's First Set of Interrogatories, Requests for Admissions, and Request for Production of

Documents to Petitioner's counsel no later than Tuesday, September 7, 1982.

IT IS ALSO ORDERED that any requests for admissions which are not admitted or denied by said date shall be deemed admitted.

IT IS FINALLY ORDERED that Respondent shall file its response to Petitioner's First Set of Interrogatories, Requests for Admissions, and Request for the Production of Documents with this Hearing Officer on or before September 7, 1982.

James Garrettson
Hearing Officer

Notice to:

Mathew S. Scherschel
Deputy Attorney General
Counsel for Environmental
Management Board of the
State of Indiana
Room 219, State House
Indianapolis, Indiana 46204

John M. Kyle III, Esquire
Barnes & Thornburg
1313 Merchants Bank Building
Indianapolis, Indiana 46204
Telephone: (317) 638-1313

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.

THE ENVIRONMENTAL MANAGEMENT BOARD OF THE STATE OF INDIANA,

Respondent.

CAUSE NO. N-53

RECEIVED
AUG 25 1982
INDIANA STATE BOARD OF HEALTH
ASSISTANT COMMISSIONER FOR
ENVIRONMENTAL HEALTH

PETITIONER'S FIRST SET OF INTERROGATORIES, REQUESTS FOR ADMISSIONS, AND REQUESTS FOR THE PRODUCTION OF DOCUMENTS

Pursuant to Rule 28(F) of the Indiana Rules of Trial Procedure, Petitioner, GARY DEVELOPMENT, INC., hereby propounds the following interrogatories, requests for admissions, and request for production of documents on Respondent. The obligations imposed upon Respondent by Rules 26, 33, 34, 36 and 37 of the Indiana Rules of Trial Procedure are incorporated by reference herein. Petitioner further requests that Respondent respond to these interrogatories and requests for admissions, and produce the documents requested herein, on or before September 7, 1982 for the reasons set forth in Petitioner's Motion to Shorten Time for Respondent to Reply to Petitioner's Interrogatories, Requests for Admissions, and Requests for Production of Documents, or in the Alternative, Motion for Continuance filed this same day. In answering the interrogatories and requests for admissions, please reproduce the interrogatory and request in full prior to responding. If you are unable to answer each interrogatory or request in full, answer to the extent possible and specify the reason for your inability to answer in full.

A. THE TYPE OF WASTE INVOLVED:

1. Admit or deny that the staff of the Indiana Environmental Management Board (hereafter referred to as "Respondent"

or "the State") has refused to grant Petitioner permission to continue accepting "hazardous wastes" as defined in 320 IAC 5-2-1 (1982 Cum. Supp.) (these wastes as so defined are hereafter referred to as "industrial wastes") at the Gary Development landfill ("GDL").

(a) Admit or deny that the term industrial wastes covers a much broader range of wastes than is covered by the definition and listing of "hazardous wastes" contained in 320 IAC 4-3 (1982 Cum. Supp.: all citations to 320 IAC used hereafter refer to the current, 1982 Cumulative Supplement, unless specifically noted otherwise).

(b) Admit or deny that the wastes covered by 320 IAC 4-3 (hereafter: "RCRA hazardous wastes") are the wastes covered by the federally-inspired hazardous waste management program pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. 6901, et seq.

(c) Admit or deny that many industrial wastes do not possess the same pernicious (as used herein, the term "pernicious" means "injurious or destructive to human health or the environment") characteristics as RCRA hazardous wastes.

(d) Admit or deny that many industrial wastes do not possess the same degree of pernicious characteristics as RCRA hazardous wastes.

(e) Admit or deny that RCRA hazardous wastes are a subset of industrial wastes.

(f) Admit or deny that the category of industrial wastes which are not also classified as RCRA hazardous wastes are, generally speaking, less pernicious than RCRA hazardous wastes.

(g) Admit or deny that the category of industrial wastes which are not also classified as RCRA hazardous wastes do not, generally speaking, possess the same hazardous or pernicious characteristics as recrewaste, but rather, includes all industrial wastes which possess "inherent dangers."

(h) If your response to any of the above requests for admissions is one of denial, explain in detail the reason for your denial including examples of the wastes which do not meet the above categorizations, and discuss the characteristics of each such waste.

(i) Produce all documents relating to your responses to the questions and requests for admissions contained in Interrogatory 1 and all subparts hereto.

B. THE STATE'S REASONS FOR DENYING GDL CONTINUED AUTHORITY TO ACCEPT INDUSTRIAL WASTES:

2. In Mathew Scherschel's, attorney for Respondent, letter to John M. Kyle III dated August 3, 1982, Mr. Scherschel said that one of the reasons GDL had been denied permission to continue accepting industrial wastes was:

> The geologic setting of Petitioner's site is marginal. Therefore, the site construction techniques are very important, and were to "make up for" that marginal geologic setting. The site construction by Petitioner has been poor, as shown by noncompliance with the approved construction plans. Because of the techniques used, there is no "back up" for existing geology.

(a) Discuss all reasons for classifying the GDL site as geologically "marginal."

(b) Admit or deny that numerous landfills exist in this same general geologic setting and that such landfills legally and illegally accept industrial wastes.

(c) List all such landfills and their addresses referred to in your response to subparagraph (b) above; list all industrial wastes which the State has allowed, pursuant to 320 IAC 5-5-14, to be disposed of at such landfills; categorize each waste listed as either industrial or RCRA hazardous waste (as defined above) or both; describe each waste's hazardous characteristics; and discuss the current State action to limit or eliminate disposal of such waste in said landfills.

(d) Isn't true that certain construction techniques or other measures can be undertaken to compensate for marginal geology? Give examples of such construction techniques and measures and discuss in detail how these reasons would protect the environment and be incorporated at GDL.

(e) Discuss in detail all specific examples supporting the State's allegation that Petitioner had not complied with approved construction plans.

(f) Discuss at length the specific actions, techniques, or construction measures which you contend would render GDL a suitable site to dispose of industrial wastes, or at least some types of industrial wastes.

(g) Do you contend that GDL is unsuitable to accept any waste classified as "industrial." Discuss your response in detail.

(h) Produce all documents relating to your responses to Interrogatory 2 and all subparts thereto.

3. Mr. Scherschel's August 16th letter referred to in Interrogatory 2 above, gave the following additional reason for denying GDL the ability to receive industrial wastes:

> There have [sic: has] been an unacceptable daily operation on-site, thereby not providing a good site for secure disposal of the subject hazardous wastes. The unacceptable daily operations include the non-provision of sufficient daily cover, as well as the manner in which Petitioner has handled and compacted solid waste. The use of fly ashes cover is not acceptable due to the permiability [sic: permeability] of that material.

(a) Discuss in detail all specific examples, giving dates and times, of such alleged "unacceptable daily operation on-site."

(b) Discuss in detail the allegation that insufficient daily cover has been used, referring to the date and time that such insufficient cover allegedly occurred, refer to the specific inspection reports supporting such allegation, and

discuss expected adverse environmental impacts arising from such alleged practices.

(c) Discuss in detail the allegation that Petitioner has improperly handled and compacted solid waste, refer to the date and time of such alleged improper handling and compaction, refer to specific inspection reports supporting this allegation, and discuss the adverse environmental impacts arising from such alleged practices.

(d) Discuss in detail the allegation that Petitioner has utilized fly ash in lieu of other acceptable cover, refer to the date and time of such alleged practice, refer to the specific inspection reports supporting such allegation, and discuss the expected adverse environmental impacts arising from such alleged practices.

(e) Has fly ash or shredder material ever been used in lieu of other cover, or has it rather been used in addition thereto? Discuss your response in detail.

(f) Has the State ever granted GDL, verbally or in writing, permission to use fly ash or shredder material as top surfacing for cover and not in lieu of cover? Discuss your answer in detail.

(g) Defining "marker pile" as a compacted pile of refuse left overnight to serve as a guidepost for initiating the next day's dumping, does the State in fact permit this practice? If so, how large may such a marker pile be? Do any of the examples given of allegedly insufficient daily cover include, in whole or in part, uncovered marker piles? Discuss your response to this subpart in detail.

4. Discuss in detail any and all reasons not covered by the discussion in Interrogatories 2 and 3 above, leading to the State's refusal to grant GDL the continued ability to accept industrial wastes.

5. Produce all documents discussing or relating to your responses to Interrogatories 2 through 5 above.

C. INSPECTIONS:

6. We have in our possession copies of inspection reports performed by Indiana State Board of Health inspectors of GDL for the following dates: 1/8/82; 10/20/81; 8/20/81; 7/10/81; 4/21/81; 1/8/81; 11/14/80; 9/19/80; 7/25/80; 6/19/80; 10/30/79; 4/18/79; 11/30/78; 8/17/78; 6/20/78; 5/9/78; 4/7/78; 3/15/78; 10/20/77; 8/8/77; 5/26/77; 3/29/77; 1/20/77; 10/5/76; 8/10/76; 7/14/76; 5/26/76; 5/11/76; 4/5/76; 2/26/76; 2/11/76; 1/22/76; 12/2/75; 10/9/75; 6/4/75; 4/1/75; 1/30/75; 12/17/74; 1/4/74; and 10/5/73.

(a) Are these the only inspections conducted by the State?

(b) If other inspections have been conducted by the State, provide the dates of such inspections, the name of the Inspector(s), and produce copies of any inspection reports made pursuant to those inspections.

(c) To your knowledge, has anyone other than the State conducted inspections at GDL? If so, specify the date of such inspections, the name of the Inspector(s), and produce copies of any inspection reports made pursuant to those inspections.

7. Referring to the State's January 8, 1982 inspection report:

(a) Admit or deny that on January 8, 1982, George Oliver and Stu Miller inspected GDL and found the site acceptable;

(b) Admit or deny that daily cover operations, including spreading and compacting of such material, were not found unacceptable;

(c) State the adverse environmental impact(s), if any, which would result from the use of foundry sand as a cover material; and

(d) Admit or deny that no improper handling or disposal of hazardous waste was detected.

8. Referring to the State's October 20, 1981 inspection report:

(a) Admit or deny that on October 20, 1981, George Oliver and Bill Morgan inspected GDL and found the site acceptable;

(b) Admit or deny that George Oliver and Bill Morgan found:

(i) that the daily operation at GDL showed "much improvement;"

(ii) that the refuse was compacted;

(iii) that the working face was in a small area; and

(iv) that there were no violations of applicable state regulations noted. [Answer each subpart separately.]

9. Referring to the State's inspection report of August 20, 1981:

(a) Explain the significance of the notation that "The J & L Steel Manifest # 7302-12750 - Tar Decanter Sludge and #7302-12685 - Central Waste Treatment Plant Sludge were received at the site on 8/19/81," in the absence of any further notation that either substance was improperly disposed of by GDL.

(b) What methodology was used to determine that the "sludge observed" originated from the Central Waste Treatment Plant Sludge Manifest # 7302-12685 and was in fact received by GDL on August 19, 1981?

(c) At the time of this inspection, was GDL closed for business, or was it continuing to accept waste for that day?

(d) What methodology was used to correlate the size of the working face with the amount of refuse received by Gary

Development to lead the inspectors to conclude that daily cover was not being applied?

(e) How large was the large working face?

(f) What is the anticipated adverse environmental impact of employing fly ash for a cover material? Was fly ash used in lieu of, or in addition to, other acceptable cover material?

(g) Were the engineering drawings consulted at the time of the inspection and employed contemporaneously with the determination that the leachate collection system was not being constructed as per the drawings?

10. Regarding the statement in the State's August 20, 1981 report that "hazardous waste is not properly disposed of:"

(a) List the specific types of hazardous waste, and their hazardous properties, which were not properly disposed of.

(b) What was the improper manner in which any such waste was being disposed of?

(c) What quantity of such waste was being disposed of?

(d) What was the source of any such waste which was improperly disposed of?

(e) Were any such wastes subject to a letter issued by the State pursuant to 320 IAC 5-5-14 (hereafter: "Special Permission Letter")?

(f) Were any such wastes similar in nature to other wastes being taken to GDL pursuant to a Special Permission Letter?

(g) Explain in reasonable detail the adverse environmental impacts associated with the alleged improper disposal of such wastes.

11. Admit or deny that on July 10, 1981, George Oliver and Mary Roe inspected GDL and found the site's operation acceptable.

12. Referring to the July 10, 1981 inspection report:

(a) What environmental concerns were raised by GDL's acceptance of shredder material?

(b) What adverse environmental impacts were anticipated by GDL's acceptance of such shredder material?

13. Admit or deny that on April 21, 1981, George Oliver inspected GDL and found (a) site to be acceptable; (b) that the refuse was worked well; and (c) cover was applied? [Answer each subpart separately.]

14. Regarding the State's April 21, 1981 inspection report, what is the significance of the notation that Union Carbide coal ash/slag was coming to the landfill?

15. Referring to the State's January 8, 1981 inspection report:

(a) What is the anticipated adverse environmental impact of the end of the working face being a cliff?

(b) Are there any weather-related factors which could have resulted in the operator being unable to maintain a 3:1 slope?

16. Referring to the State's November 14, 1980 inspection report:

(a) What specific areas were observed which did not have daily cover?

(b) Which two edges approximately four feet high needed to be worked onto a 3:1 slope?

(c) What is the anticipated adverse environmental impact of the Gary Landfill accepting aluminum dross?

(d) Is aluminum dross an "industrial waste" or a "RCRA hazardous waste," or both? Please give citations of authority as to the categorization of aluminum dross, and the regulation supporting this classification.

(e) What was the source and quantity of the water and leachate which were observed seeping into the pit along the west boundary?

17. Referring to the State's September 19, 1980 inspection, admit or deny that George Oliver inspected GDL and found that the refuse was "compacted well."

18. Referring to the State's September 19, 1980 inspection, what criteria was employed by the Inspector to determine that daily cover had not been applied for two or three days?

19. Admit or deny that on July 25, 1980, George Oliver inspected GDL and found the site was: (a) acceptable and the operation satisfactory; and (b) that the refuse was compacted well and a cover applied. [Answer each subpart separately.]

20. Admit or deny that on June 19, 1980, George Oliver inspected GDL and found:

(a) the site acceptable;

(b) the refuse compacted well; and

(c) daily cover applied. [Answer each subpart separately.]

21. Referring to the State's June 19, 1980 inspection:

(a) What quantity of blowing paper was observed and did that quantity constitute a threat to the environment and/or the health of the citizens of Indiana? If so, discuss your response in detail.

(b) What were the wind conditions on that particular day?

22. Referring to the State's inspection report of October 30, 1979:

(a) What was the quantity of "hazardous waste" which was improperly disposed of, and for each waste, was the waste an industrial waste, a RCRA hazardous waste, or both?

(b) Was this waste subject to, or similar in nature to waste subject to, a Special Permission Letter issued by Indiana?

(c) What was the nature and amount of exposed refuse observed in the northeastern portion of the property?

(d) What is the quantity and type of oil which was being placed in the trench? Describe the anticipated adverse environmental impact of this practice?

23. Referring to the State's April 18, 1979 inspection report:

(a) Which sections of the clay wall were not completed?

(b) How close were these missing sections to the working areas of the landfill?

(c) Upon what date was the wall to be completed as per the State-approved plan?

24. Admit or deny that on Nowember 30, 1978, Bruce Palin and Jim Hunt inspected GDL and found the site acceptable.

25. Admit or deny that on August 17, 1978, Bruce Palin inspected GDL and found the site acceptable.

26. Admit or deny that on June 20, 1978, Bruce Palin inspected GDL and found the site acceptable.

27. Referring to the State's June 20, 1978 inspection report:

(a) Doesn't the notation that the "U.S. Reduction dust was causing a tremendous dust problem" and that there was a "need to contact the industry about this" indicate that the

dust problem was caused by U.S. Reduction and not Gary Development? If not, discuss your response in detail.

(b) What were the results of the water quality tests which were requested to be sent to the Board?

28. Referring to the State's May 9, 1978 inspection report:

(a) What are the anticipated adverse environmental impacts of disposing of these particular oily wastes at GDL?

(b) What specific inadequacy was found with the daily cover?

29. Referring to the State's April 7, 1978 inspection report:

(a) Were any tests conducted upon the samples taken of the discharge?

(b) If so, produce the results of those tests.

30. Referring to the State's April 7, 1978 report, what methodology was employed by the Inspectors to ascertain that the alleged insufficiently covered materials were materials dumped at the site on a date previous to the date of inspection?

31. Referring to the State's March 15, 1978 inspection, could any of the ponded water on the site have been due to environmental factors, such as a spring melt or heavy rains, which are beyond the control of the operator? Discuss your answer in detail.

32. Other than the State's March 15, 1978 report, have any incidents of scavenging been detected by Inspectors at the site?

33. Admit or deny that prior to March 15, 1978, the operation of GDL was never deemed unacceptable by the State.

34. Admit or deny that on October 15, 1976; August 10, 1976; July 14, 1976; April 5, 1976; December 2, 1975; June 4, 1975; April 1, 1975; and January 30, 1975, the overall operation of the site was rated "good" by the State.

35. Admit or deny that on December 17, 1974, the overall operation of GDL was rated "excellent" by the State.

36. Does the State provide its Inspectors of solid/hazardous waste facilities with a training manual or any other similar document, containing guidelines, requirements, procedures, or recommendations to be used by Inspectors in the course of their inspections? If so, produce said manual or documents, and all documents relating to said manual or documents.

37. Does the State provide, or if not, send its potential Inspectors to, a training program of any kind, formal or informal, which individuals must attend and/or pass prior to becoming official Inspectors of the State of Indiana?

(a) If so, discuss in detail the nature of such programs; produce all documents relating thereto; and provide proof that the Inspectors whose names appear in the inspection reports referred to in Interrogatory 6 above successfully completed such a program.

(b) What are the educational and/or experience requirements demanded by the Board for landfill Inspectors.

(c) For those Inspectors which have participated in inspections of GDL, list

(i) the educational background of each Inspector including the degree conferred, the school from which the degree was conferred, the date of conferral;

(ii) the landfill-related work experience of each Inspector including, the length and type of experience each has had

(1) inspecting landfills for the State of Indiana;

(2) inspecting landfills for private organizations;

(3) managing or operating landfills;

(4) working at landfills.

38. Is it a generally accepted practice by the State and/or its Inspectors not to place "cover" on a landfill until the end of the day when the landfill stops accepting wastes for that day?

(a) If the answer to the above question is yes, how can an Inspector determine at a period of time when a landfill is continuing to accept wastes, whether cover for that day is or will be adequately applied to the landfill? Discuss this answer in detail.

(b) If the answer to the main question contained in number 38 above is no:

(i) at what point in time does the State require that cover be applied?

(ii) cite any and all regulations, and refer to any and all documents establishing, relating to, and discussing such a requirement.

(c) Produce any and all documents relating to and/or discussing the time when cover is to be applied under Indiana law.

D. SPECIAL PERMISSION LETTERS:

39. We have in our possession the following "Special Permission Letters" (as used herein, the term "Special Permission Letters" refers to those letters issued by the State granting authority to dispose of hazardous or special wastes pursuant to 320 IAC 5-5-14) issued by the State to GDL:

Date	Waste Type	Waste Quantity
1/14/81	Fly Ash	80,000 cubic yards for calendar year 1981

Date	Waste Type	Waste Quantity
1/9/81	Asbestos	50 cubic yards (one-time-only basis)
12/17/80	Pipe Insulating Asbestos Waste	300 cubic yards (one-time-only basis)
12/9/80	Metal Shavings	25 cubic yards per year
10/30/80	Asbestos Contaminated Material	700 cubic yards (one-time-only basis)
8/25/80	Asbestos	100 cubic yards (one-time-only basis)
5/14/80	Asbestos	40 cubic yards per week for four weeks; 20 cubic yards every other week thereafter
5/13/80	Fly Ash	15,000 cubic yards
11/27/79	Aluminum Dross (Milling Dust and Slag)	300 tons per day until June 15, 1980
3/20/79	Furnace Brick, Pallets	Unspecified
4/28/78	Water and Vegetable Oil	4,000 gallons (one-time-only basis)
11/18/77	Herbicide	120 cubic yards (one-time-only basis)
9/6/77	Oily Waste From 6-Stand Oil Recovery Unit	1,200 gallons per day
7/22/77	Filter Cake Kiln Scrubber Mud	1,500 pounds per week 3,000 pounds per week
6/3/77	API Separator Bottoms	200 cubic yards per year
6/1/77	Lime Sludge	80,000 gallons per month (not more than 4,000 gallons per day)
5/17/77	Asbestos Paper	105 cubic yards per week
5/12/77	Filter Cake Scrubber Mud	1,500 pounds per week 3,000 pounds per week (Temporary Approval)
4/25/77	Activated Biological Sludge	Unspecified
3/14/77	Calcium Sulfate	1.5 tons per day.
3/14/77	Lime Waste	80,000 gallons per month
3/4/77	Youngstown Oil Sludge	Unspecified
10/7/76	Gypsum Wastes (ph 7.9)	Quantity Unspecified
10/4/76	Calcium Carbonate	30 cubic yards per day
4/12/76	Paint Sludges	25 cubic yards per day
2/20/76	Corn Starch and Carbon Filters	Unspecified

Date	Waste Type	Waste Quantity
1/30/76	Lime Slurry	1,500 to 5,000 gallons per week
6/18/75	Neutralized Sludges	Temporary Approval
2/24/75	Dripolene	4 to 5 truckloads per week for 6 months

(a) Are the Special Permission Letters outlined above the only such letters issued by the State granting permission to any person or company to dispose of hazardous or special wastes at GDL? If not, list all other such letters and their date; specify the type of waste involved; identify whether such waste is an industrial waste, a RCRA hazardous waste, or both; and produce copies of such letters and all documents relating thereto.

(b) Has the State ever orally granted special permission to dispose of special or hazardous waste at GDL and not followed up on such oral approval with a letter? If so, state the date of such approval; the generator and type of waste involved; and the amount and duration of the waste permitted to be disposed of.

(c) Admit or deny that the above chart accurately sets forth the Special Permission Letters granted to GDL, and the type, amount, and duration of the disposal of such wastes. If you deny this statement, specify the inaccuracies, and set forth, in detail, a correct replacement chart.

(d) Admit or deny that the State could not and would not issue the above Special Permission Letters unless it determined that disposal of such wastes at GDL would not pose an unreasonable risk of harm to the environment or health of the citizens of Indiana.

(e) If Respondent denies subpart (d) above, then state in detail under what conditions the Board would issue a Special Permission Letter knowing that disposal pursuant to said letter would pose an unreasonable risk of harm to the environment or health of the citizens of Indiana.

(f) Discuss in detail the considerations the Board addresses in reviewing a Special Permission Letter request and the factors which lead the Board to grant or deny such requests.

(g) Produce any and all documents relating to your responses to Interrogatory 39.

40. Regarding each entry contained in the chart in Interrogatory 39 above, for each waste and entry listed, state whether each waste is an industrial waste, a RCRA hazardous waste, or both. Discuss in detail the categorization of each waste, the properties that render each waste "hazardous," and produce all documents relating to this Interrogatory.

41. Admit or deny that a Special Permission Letter which grants the right to dispose of a particular waste at a given rate per unit of time (e.g. 40 cubic yards per week) remains in effect until the permission expires of its own terms or until the State takes further action regarding said permission. If Respondent denies this statement, then discuss in detail the ways such a Special Permission Letter becomes ineffective and invalid. Produce documents relating to this Interrogatory.

42. For each waste set forth in the chart in Interrogatory 39 above, discuss in detail the reasons why GDL cannot <u>and</u> should not continue accepting such wastes; the potential risk to the environment and health of the citizens of Indiana associated with continued acceptance of each such waste in like quantities at GDL; why disposal of such waste now is denied while it was previously permitted; and produce all documents relating to this Interrogatory.

43. Have any state inspections of GDL revealed improper disposal practices relating to the disposal of each waste listed in the chart in Interrogatory 35 above? If so, discuss in detail the alleged improper practices, the dates on which

these improper practices were observed, the potential environmental problems associated with said practices, and produce all documents relating to this Interrogatory.

44. GDL received permission to accept the following listed wastes:

Waste Type	Permission Letter Date	Amount Allowed
API Separator Bottoms	6/3/77	200 cubic yards
Paint Sludges	4/12/76	25 cubic yards
Solid Corn Starch	2/20/76	Unspecified
Carbon Filters from Corn Syrup Filtering Processes	2/20/76	Unspecified
Lime Sludges	6/1/77	80,000 gallons per month or 4,000 gallons per day
Lime Waste	3/14/77	80,000 gallons per month
Calcium Carbonate	10/4/76	30 cubic yards per day
Lime Sludge	1/30/76	1,500 to 5,000 gallons per week
Activated Biological Sludge	4/25/77	Unspecified
Calcium Sulfate	3/14/77	1.5 tons per day
Gypsum Wastes (no Cd or Pb)	10/7/76	Unspecified

For each of the above-mentioned wastes, answer the following questions:

(a) Admit or deny that permission was received by GDL to receive this waste.

(b) Is each waste listed an industrial waste, a RCRA hazardous waste, or both? Cite the authority for, and the regulations supporting, this categorization.

(c) Admit or deny that the above approvals to accept each waste listed were given on a continuing basis? If you deny this statement, discuss your response in detail.

(d) For each waste identified above, discuss in detail the anticipated adverse environmental impacts of continued disposal of these material at GDL.

(e) In the past, have inspections revealed any improper dumping practices relating to the disposal of these wastes identified above? If so, discuss in detail the specific instances and problems, give the dates of the inspections, and produce all documents relating thereto.

(f) Discuss in detail the State's reasons for denying approval to Gary Landfill to accept each waste listed above in the future?

E. MISCELLANEOUS:

45. What specific corrective actions do you contend are necessary to place the landfill in compliance with the applicable state laws and regulations and to enable GDL to accept hazardous and/or industrial wastes?

46. Identify each person the State plans to call as a witness at the hearing of this matter, each person's address and telephone number (business or personal), and state in reasonable detail the anticipated testimony of each.

47. Produce all inspection reports of, and Special Permission Letters granted relating to, the following landfills:

(a) the Wheeler Landfill;

(b) the City of Gary Landfill;

(c) the City of Munster Landfill; and

(d) the J & D Landfill.

48. If any of the landfills listed in Interrogatory 47 above may lawfully accept industrial wastes, discuss in detail the reasons therefor, and the specific reasons for treating any of these landfills differently from GDL.

John M. Kyle III

John M. Kyle III

Vic Indiano /SMKH

Vic Indiano

Attorneys for Gary Development Company, Inc.

Of Counsel:

BARNES & THORNBURG
1313 Merchants Bank Building
Indianapolis, Indiana 46204
Telephone: (317) 638-1313

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing "Petitioner's First Set Of Interrogatories, Requests For Admissions, And Requests For The Production Of Documents" has been served on the Respondent by depositing a copy thereof in the United States First Class Mail, addressed to:

Mathew S. Scherschel, Deputy Attorney General
Counsel for Environmental Management Board of
the State of Indiana
Room 219, State House
Indianapolis, Indiana 46204;

and hand delivered to Ms. Brenda Rodeheffer, counsel for Respondent, and Mr. George Oliver of the Division of Land Pollution Control, as a courtesy.

This 25th day of August, 1982.

John M. Kyle III

John M. Kyle III

Reference OO
Response to Petitioner's First set of Interrogatories
and other court related documents

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

BEFORE THE ENVIRONMENTAL MANAGEMENT BOARD OF THE STATE OF INDIANA

RECEIVED
SEP 27 1982
INDIANA STATE BOARD OF HEALTH
ASSISTANT COMMISSIONER FOR
ENVIRONMENTAL HEALTH

IN THE MATTER OF
GARY DEVELOPMENT, INC.,

Petitioner,

v.

THE ENVIRONMENTAL
MANAGEMENT BOARD OF
THE STATE OF INDIANA,

Respondent.

CAUSE NO. N-53

RESPONDENT'S ANSWERS TO PETITIONER'S FIRST SET OF INTERROGATORIES, REQUESTS FOR ADMISSIONS AND REQUESTS FOR THE PRODUCTION OF DOCUMENTS

Comes now the Respondent, the ENVIRONMENTAL MANAGEMENT BOARD OF THE STATE OF INDIANA, by counsel Linley E. Pearson, Attorney General of the State of Indiana, by Mathew S. Scherschel, Deputy Attorney General, and in response to Petitioner's First Set of Interrogatories, Requests for Admissions and Requests for the Production of Documents, says:

A. THE TYPE OF WASTE INVOLVED:

1. Admit or deny that the staff of the Indiana Environmental Management Board (hereafter referred to as "Respondent" or "the State") has refused to grant Petitioner permission to continue accepting "hazardous wastes" as defined in 320 IAC 5-2-1 (1982 Cum. Supp.) (these wastes as so defined are hereafter referred to as "industrial wastes") at the Gary Development Landfill ("GDL").

1. Deny that Board staff refused to grant permission to continue accepting hazardous waste but admit that the Board has refused to grant such permission.

(a) Admit or deny that the term industrial wastes covers a much broader range of wastes than is covered by the definition and listing of "hazardous wastes" contained in 320 IAC 4-3 (1982 Cum. Supp.: all citations to 320 IAC used hereafter refer to the current, 1982 Cumulative Supplement, unless specifically noted otherwise).

(a). Admit.

(b) Admit or deny that the wastes covered by 320 IAC 4-3 (hereafter: "RCRA hazardous wastes") are the wastes covered by the federally-inspired hazardous wastes management program pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. 6901, et seq.

(b) Admit.

(c) Admit or deny that many industrial wastes do not possess the same pernicious (as used herein, the term "pernicious" means "injurious or destructive to human health or the environment") characteristics as RCRA hazardous wastes.

(c) Admit.

(d) Admit or deny that many industrial wastes do not possess the same degree of pernicious characteristics as RCRA hazardous wastes.

(d) Admit.

(e) Admit or deny that RCRA hazardous wastes are a subset of industrial wastes.

(e) Admit.

(f) Admit or deny that the category of industrial wastes which are not also classified as RCRA hazardous wastes are, generally speaking, less pernicious than RCRA hazardous wastes.

(f) Admit.

(g) Admit or deny that the category of industrial wastes which are not also classified as RCRA hazardous wastes do not, generally speaking, possess the same hazardous or pernicious characteristics as recrewaste, but rather, includes all industrial wastes which possess "inherent dangers."

(g) Admit

(h) If your response to any of the above requests for admissions is one of denial, explain in detail the reason for your denial including examples of the wastes which do not meet the above categorizations, and discuss the characteristics of each such waste.

(h) Explanation included in answer to Interrogatory 1.

(i) Produce all documents relating to your responses to the questions and requests for admissions contained in Interrogatory 1 and all subparts hereto.

(i) The answers in 1. are substantiated in 320 IAC 4 and 320 IAC 5.

B. <u>THE STATE'S REASONS FOR DENYING GDL CONTINUED AUTHORITY TO ACCEPT INDUSTRIAL WASTE</u>:

2. In Mathew Scherschel's, attorney for Respondent, letter to John M. Kyle III dated August 3, 1982, Mr. Scherschel said that one of the reasons GDL had been denied permission to continue accepting industrial wastes was:

> The geologic setting of Petitioner's site is marginal. Therefore, the site construction techniques are very important, and were to "make up for" that marginal geologic setting. The site construction by Petitioner has been poor, as shown by noncompliance with the approved construction plans. Because of the techniques used, there is no "back up" for existing geology.
> (a) Discuss all reasons for classifying the GDL site as geologically "marginal."

2. (a) (1) The site consists of a pit in very fine-grained beach and dunal sand. The sand has a hydraulic conductivity of .02 cm/sec,

which is insufficient to retain the flow of contaminants beyond the site boundary. The sand offers little if any attenuation of leachate.

(2) The sand is a saturated unconfined aquifer with a high water table. Any movement of contaminant beyond the site is a hazard to groundwater resources. 320 IAC 5-5-6(c) prohibits filling into an aquifer. A barrier of undisturbed soil must be maintained between the refuse and the aquifer.

(3) The site is located adjacent to the Grand Calumet River. The movement of leachate beyond the pit is a hazard to the surface water resources.

(4) The site is located in a flood hazard area. An Indiana Department of Natural Resources (DNR) permit for flood plain alteration has never been acquired.

(5) Due to the fact that the site is in an aquifer, the operator has had to dewater the pit. The infiltrating groundwater quality is potentially poor and the operator has failed to provide sufficient testing of the collected groundwater before discharging it to the Grand Calumet.

(6) Sand has been used for cover material. Sand as cover material does not prohibit precipitation from entering the refuse and producing leachate.

(b) Admit or deny that numerous landfills exist in this same general geologic setting and that such landfills legally and illegally accept industrial wastes.

(b) Deny.

(c) List all such landfills and their addresses referred to in your response to subparagraph (b) above; list all industrial wastes which the State has allowed, pursuant to 320 IAC 5-5-14, to be disposed of at such landfills; categorize each waste listed as either industrial or RCRA hazardous waste (as defined above) or both; described each waste's hazardous characteristics; and discuss the current State action to limit or eliminate disposal of such waste in said landfills.

(c) Not applicable.

(d) Isn't true that certain construction techniques or other measures can be undertaken to compensate techniques and measures and discuss in detail how these reasons would protect the environment and be incorporated at GDL.

(d) It is true. Such examples were proposed in the original GDL plans and in the amendment to the construction permit. It is very

difficult to say what other techniques might be available and applicable to the specific geology of the GDL site.

(e) Discuss in detail all specific examples supporting the State's allegation that Petitioner had not complied with approved construction plans.

(e) Non-compliance with 1973 Construction Plan.

(1) External dewatering system not constructed around entire site.

(2) Discharge of water to the Grand Calumet not monitored.

(3) Flow meter on discharge to Grand Calumet not utilized.

(4) Initial clay liner surrounding the entire site not constructed.

(5) Leachate from site was not taken to a wastewater treatment plant.

(6) A gas venting system has not been installed on finished areas.

(7) Leachate collection system not constructed.

Non-compliance with 1980 Construction Plan Amendment

(1) Failure to utilize impervious clay soil for daily cover.

(2) Failure to construct clay berm by compacting 12-inch layers of clay to 90% Standard Proctor Density.

(3) Failure to follow operational plan specifying fill sequence and progression.

(f) Discuss at length the specific actions, techniques, or construction measures which you contend would render GDL a suitable site to dispose of industrial wastes, or at least some types of industrial wastes.

(f) Staff does not contend that the site can be rendered suitable for industrial waste disposal.

(g) Do you contend that GDL is unsuitable to accept <u>any</u> waste classified as "industrial." Discuss your response in detail.

(g) Yes. The vital past construction necessary to protect the environment was not verified and the site cannot be judged as secure enough to accept industrial waste which would compound problems with any leachate movement away from the site.

(h) Produce all documents relating to your responses to Interrogatory 2 and all subparts thereto.

(h) Geologic evaluation and USGS quadrangle map are attached. (Attachment A).

3. Mr. Scherschel's August 16th letter referred to in Interrogatory 2 above, gave the following additional reasons for denying GDL the ability to receive industrial wastes:

> There have (sic: has) been an unacceptable daily operation on-site, thereby not providing a good site for secure disposal of the subject hazardous wastes. The unacceptable daily operations include the non-provision of sufficient daily cover, as well as the manner in which Petitioner has handled and compacted solid waste. The use of fly ashes cover is not acceptable due to the permiability (sic: permeability) of that material.

(a) Discuss in detail all specific examples, giving dates and times, of such alleged "unacceptable daily operation on-site."

3. (a) See inspection reports for the following dates; 3/15/78, 4/7/78, 5/9/78, 4/18/79, 8/24/79, 10/30/79, 9/19/80, 11/14/80, 1/8/81, 8/20/81.

(b) Discuss in detail the allegation that insufficient daily cover has been used, referring to the date and time that such insufficient cover allegedly occurred, refer to the specific inspection reports supporting such allegation, and discuss expected adverse environmental impacts arising from such alleged practices.

(b) See inspection reports for the following dates; 3/15/78, 4/7/78, 5/9/78, 4/18/79, 8/24/79, 10/30/79, 9/19/80, 11/14/80, 1/8/81, 8/20/81. The lack or inadequacy of daily, intermediate or final cover can cause the following problems:

NOTE: Under definitions of "contaminant," "air pollution," and "water pollution" under IC 13-7-1-2; the prohibited acts described under IC 13-7-4-1; and the authority to issue permits under IC 13-7-10; the Board is authorized to regulate acts concerning contaminants which are, or threaten to be, injurious to human health, plant or animal life, to property, or to enjoyment of life or property, or with contaminants which threaten nuisance, or which render waters harmful, detrimental, or injurious to public health, safety, or welfare. Wherever Respondent claims more specific effects other than just "environmental impacts," Respondent will so indicate by means of an asterisk.

(1) Infiltration of precipitation causing leachate which can move to the perimeter where the leachate collection system and side barrier were improperly constructed.

Movement of leachate outside the site will degrade surface and ground waters.

(2) Allow bird population to feed on wastes, flock around the site and possibly interfere with aircraft at the nearby airport.* (nuisance)

(3) Allow vectors to feed on exposed refuse. *(public health)

(4) Allow underground fires to spread. *(public health & safety)

(5) Allow odors to permeate through the area. *(nuisance)

(c) Discuss in detail the allegation that Petitioner has improperly handled and compacted solid waste, refer to the date and time of such alleged improper handling and compaction, refer to specific inspection reports supporting this allegation, and discuss the adverse environmental impacts arising from such alleged practices.

(c) See inspection reports for the following dates; 3/15/78, 4/7/78, 8/24/79, 11/14/80, 1/8/81. Adverse impacts would be the same as above with the addition of the following:

(1) Create steep slopes endangering the safety of equipment operators.* (health and safety)

(2) Allow voids which later subside and create depressions capable of ponding water at the top of a finished surface. * (leachate generation & public health)

(d) Discuss in detail the allegation that Petitioner has utilized fly ash in lieu of other acceptable cover, refer to the date and time of such alleged practice, refer to the specific inspection reports supporting such allegation, and discuss the expected adverse environmental impacts arising from such alleged practices.

(d) See inspection report dated 8/20/81.

(1) Fly ash, as distinguished from the fly ash admixture, does not have as low a permeability as clay soil cover and will allow greater amounts of precipitation to enter the refuse and create leachate. * (surface and ground water contamination)

(2) Fly ash is generally not inert and allows degradation of precipitation causing leachate as the precipitation migrates through it. * (surface and ground water contamination)

(e) Has fly ash or shredder material ever been used in lieu of other cover, or has it rather been used in addition thereto? Discuss your response in detail.

(e) Fly ash and shredder material have both been used in lieu of other cover.

(f) Has the State ever granted GDL, verbally or in writing, permission to use fly ash or shredder material as top surfacing for cover and not in lieu of cover? Discuss your answer in detail.

(f) The State has never granted permission for fly ash or shredder material to be used as top surfacing at Gary Development; however, the inspector has not objected to the use of fly ash for developing roads over filled areas.

(g) Defining "marker pile" as a compacted pile of refuse left overnight to serve as a guidepost for initiating the next day's dumping, does the State in fact permit this practice? If so, how large may such a marker pile be? Do any of the examples given of allegedly insufficient daily cover include, in whole or in part, uncovered marker piles? Discuss your response to this subpart in detail.

(g) No.

4. Discuss in detail any and all reasons not covered by the discussion in Interrogatories 2 and 3 above, leading to the State's refusal to grant GDL the continued ability to accept industrial wastes.

4. GLD has not complied with quarterly groundwater monitoring for conventional and industrial waste disposal in the past. The clay seal is not impervious as initially stated in the construction plans. No proof of side barrier compaction has ever been submitted. Gas vents were never installed as outlined in the plans. Routine monitoring of external dewatering was not done as outlined, nor was a flow meter established on the dewatering discharge. A National Pollution Discharge Elimination System (NPDES) permit has not been obtained for the discharge. Fly ash and foundry sand were not proven to be inert for use as cover.

5. Produce all documents discussing or relating to your responses to Interrogatories 2 through 5 above.

5. See attachment A and referenced inspection reports.

C. INSPECTIONS:

6. We have in our possession copies of inspection reports performed by Indiana State Board of Health inspectors of GDL for the following dates: 1/8/82; 10/20/81; 8/20/81; 7/10/81; 4/21/81; 1/8/81; 11/14/80; 9/19/80; 7/25/80; 6/19/80; 10/30/79; 4/18/79; 11/30/78; 8/17/78; 6/20/78; 5/9/78; 4/7/78; 3/15/78; 10/20/77; 8/8/77; 5/26/77; 3/29/77; 1/20/77; 10/5/76; 8/10/76; 7/14/76; 5/26/76; 5/11/76; 4/5/76; 2/26/76; 2/11/76; 1/22/76; 12/2/75; 10/9/75; 6/4/75; 4/1/75; 1/30/75; 12/17/74; 1/4/74; and 10/5/73.

(a) Are these the only inspections conducted by the State?

6. (a) No.

(b) If other inspections have been conducted by the State, provide the dates of such inspections, the name of the Inspector(s), and produce copies of any inspection reports made pursuant to those inspections.

(b) 1/3/79 - George Oliver, 8/24/79 - George Oliver, 3/3/80 - George Oliver, 8/10/82 - George Oliver and Stu Miller, 12/28/77 - Bruce Palin See Attachment B

(c) To your knowledge, has any one other than the State conducted inspections at GDL? If so, specify the date of such inspections, the name of the Inspector(s), and produce copies of any inspection reports made pursuant to those inspections.

(c) No.

7. Referring the State's January 8, 1982, inspection report:

(a) Admit or deny that on January 8, 1982, George Oliver and Stu Miller inspected GDL and found the site acceptable;

7. (a) Admit. (From here on, an indication on an inspection report that the site is acceptable refers only to the daily operations observed at the time of the inspection.)

(b) Admit or deny that daily cover operations, including spreading and compacting of such material, were not found unacceptable;

(b) Admit.

(c) State the adverse environmental impact(s), if any, which would result from the use of foundry sand as a cover material; and

(c) The adverse environmental impact would be the same as for fly ash, except foundry sand would be even more permeable.

(d) Admit or deny that no improper handling or disposal of hazardous waste was detected.

(d) Admit.

8. Referring to the State's October 20, 1981 inspection report:

(a) Admit or deny that on October 20, 1981, George Oliver and Bill Morgan inspected GDL and found the site acceptable;

8. (a) Admit.

(b) Admit or deny that George Oliver and Bill Morgan found:

(i) that the daily operation at GDL showed "much improvement;"

(b) (i) Admit.

(ii) that the refuse was compacted;

(ii) Admit.

(iii)that the working face was in a small area; and

(iii)Admit.

(iv) that there were no violations of applicable state regulations noted. [Answer each subpart separately.]

(iv) Admit.

9. Referring to the State's inspection report of August 20, 1981:
(a) Explain the significance of the notation that "The J & L Steel Manifest # 7302-12750 - Tar Decanter Sludge and # 7302-12685 - Central Waste Treatment Plant Sludge were received at the site on 8/19/81," in the absence of any further notation that either substance was improperly disposed of by GDL.

9. (a) The report establishes that the central waste treatment plant sludge was not disposed of properly. Since the manifest for the sludge indicated the sludge was received on 8/19/81, and the report indicates it was seen on site 8/20/81, then it is established that the waste did not receive daily cover.

(b) What methodology was used to determine that the "sludge observed" originated from the Central Waste Treatment Plant Sludge Manifest # 7302-12685 and was in fact received by GDL on August 19, 1981?

(b) Reading the manifest.

(c) At the time of this inspection, was GDL closed for business, or was it continuing to accept waste for that day?

(c) Continuing to accept waste.

(d) What methodology was used to correlate the size of the working face with the amount of refuse received by Gary Development to lead the inspectors to conclude that daily cover was not being applied?

(d) Professional knowledge and experience.

(e) How large was the large working face?

(e) Do not recall.

(f) What is the anticipated adverse environmental impact of employing fly ash for a cover material? Was fly ash used in lieu of, or in addition to, other acceptable cover material?

(f) See Reply to Interrogatory 3(d).

(g) Were the engineering drawings consulted at the time of the inspection and employed contemporaneously with the determination that the leachate collection system was not being constructed as per the drawings?

(g) No.

10. Regarding the statement in the State's August 20, 1981 report that "hazardous waste is not properly disposed of:"
(a) List the specific types of hazardous waste, and their hazardous properties, which were not properly disposed of.

10. (a) Central waste treatment plant sludge. It is a RCRA hazardous waste under the F006 designation because of its potential to

leach at least one of the contaminants listed in 40 CFR 261.24.

(b) What was the improper manner in which any such waste was being disposed of?

(b) See Reply to Interrogatory 9 (a).

(c) What quantity of such waste was being disposed of?

(c) Indicated on manifest.

(d) What as the source of any such waste which was improperly disposed of?

(d) J & L Steel.

(e) Were any such wastes subject to a letter issued by the State pursuant to 320 IAC 5-5-14 (hereafter: "Special Permission Letter")?

(e) Yes.

(f) Were any such wastes similar in nature to other wastes being taken to GDL pursuant to a Special Permission Letter?

(f) The Board does not know what wastes are accepted under a special permission letter.

(g) Explain in reasonable detail the adverse environmental impacts associated with the alleged improper disposal of such wastes.

(g) The leachate from the hazardous waste or the waste itself may migrate into adjacent ground or surface waters through improperly sealed side barriers. * (ground and surface water contamination) Without proper cover, the waste is exposed to bird and vermin populations and possible human contact. * (threat to public health)

11. Admit or deny that on July 10, 1981, George Oliver and Mary Roe inspected GDL and found the site's operation acceptable.

11. Deny. A complete inspection was not conducted.

12. Referring to the July 10, 1981 inspection report:
(a) What environmental concerns were raised by GDL's acceptance of shredder material?

12. (a) As long as it is disposed of in compliance with the operational standards outlined in 320 IAC 5, there are no environmental concerns.

(b) What adverse environmental impacts were anticipated by GDL's acceptance of such shredder material?

(b) See answer to Interrogatory 12 (a).

13. Admit or deny that on April 21, 1981, George Oliver inspected GDL and found (a) site to be acceptable; (b) that the refuse was worked well; and (c) cover was applied? [Answer each subpart separately.]

13. (a) Admit.

(b) Admit.

(c) Admit.

14. Regarding the State's Aril 21, 1981 inspection report, what is the significance of the notation that Union Carbide coal ash/slag was coming to the landfill?

14. It confirmed that a material which had been approved for disposal at the site was being disposed of at the site.

15. Referring to the State's January 8, 1981 inspection report:
(a) What is the anticipated adverse environmental impact of the end of the working face being a cliff?

15. (a) The cliff indicates the refuse making up the face has not been compacted in shallow layers. See answer to Interrogatory B 3(c).

(b) Are there any weather-related factors which could have resulted in the operator being unable to maintain a 3:1 slope?

(b) No.

16. Referring to the State's November 14, 1980 inspection report:
(a) What specific areas were observed which did not have daily cover?

16. (a) Cannot recall.

(b) Which two edges approximately four feet high needed to be worked onto a 3:1 slope?

(b) Cannot recall.

(c) What is the anticipated adverse environmental impact of the Gary Landfill accepting aluminum dross?

(c) Leachate tests performed on aluminum dross showed such waste would increase several parameters of leachate generated, and compound the degradation of surface and ground water.

(d) Is aluminum dross an "industrial waste" or a "RCRA hazardous waste," or both? Please give citations of authority as to the categorization of aluminum dross, and the regulation supporting this classification.

(d) Industrial waste. 320 IAC 5.

(e) What was the source and quantity of the water and leachate which were observed seeping into the pit along the west boundary?

(e) Unknown.

17. Referring to the State's September 19, 1980 inspection, admit or deny that George Oliver inspected GDL and found that the refuse was "compacted well."

17. Admit.

18. Referring to the State's September 19, 1980 inspection, what criteria was employed by the Inspector to determine that daily cover had not been applied for two or three days?

18. Professional knowledge and experience.

19. Admit or deny that on July 25, 1980, George Oliver inspected GDL and found the site was: (a) acceptable and the operation satisfactory; and (b) that the refuse was compacted well and a cover applied. [Answer each subpart separately.]

19. (a) Admit.

(b) Admit.

20. Admit or deny that on June 19, 1980, George Oliver inspected GDL and found:
(a) the site acceptable;

20. (a) Admit.

(b) the refuse compacted well; and

(b) Admit.

(c) daily cover applied. [Answer each subart separately.]

(c) Admit.

21. Referring to the State's June 19, 1980 inspection:

(a) What quantity of blowing paper was observed and did that quantity constitute a threat to the environment and/or the health of the citizens of Indiana? If so, discuss your response in detail.

21. (a) Quantity unknown. Control of blowing litter is a requirement of Regulation 320 IAC 5.

(b) What were the wind conditions on that particular day?

(b) Do not recall.

22. Referring to the State's inspection report of October 30, 1979:
(a) What was the quantity of "hazardous waste" which was improperly disposed of, and for each waste, was the waste an industrial waste, a RCRA hazardous waste, or both?

22. (a) Quantity unknown. Industrial waste: RCRA was not in effect at the time.

(b) Was this waste subject to, or similar in nature to waste subject to, a Special Permission Letter issued by Indiana?

(b) Yes.

(c) What was the nature and amount of exposed refuse observed in the northeastern portion of the property?

(c) Refuse typically disposed of at the site. Approximately one acre in surface area, depth is unknown.

(d) What is the quantity and type of oil which was being placed in the trench? Describe the anticipated adverse environmental impact of this practice?

(d) Quantity and type unknown. Exposing refuse and destroying daily cover. [See answer to Interrogatory 3 (b)]. Practice is also a violation of the approval letter for the waste which states that waste must be mixed with the daily refuse and receive daily cover.

23. Referring to the State's April 18, 1979 inspection report:
(a) Which sections of the clay wall were not completed?

23. (a) West wall, south wall and north wall were not completed.

(b) How close were these missing sections to the working areas of the landfill?

(b) Cannot recall.

(c) Upon what date was the wall to be completed as per the State-approved plan?

(c) The completion date for the wall is not a set date. The construction of the wall is to be extended up ahead of the filling and be completed prior to the site reaching its final elevations.

24. Admit or deny that on November 30, 1978, Bruce Palin and Jim Hunt inspected GDL and found the site acceptable.

24. Deny.

25. Admit or deny that on August 17, 1978, Bruce Palin inspected GDL and found the site acceptable.

25. Deny.

26. Admit or deny that on June 20, 1978, Bruce Palin inspected GDL and found the site acceptable.

26. Deny.

27. Referring to the State's June 20, 1978 inspection report:

(a) Doesn't the notation that the "U.S. Reduction dust was causing a tremendous dust problem" and that there was a "need to contact the industry about this" indicate that the dust problem was caused by U.S. Reduction and not Gary Development? If not, discuss your response in detail.

27. (a) No, Gary Development has the responsibility to maintain the landfill in a nuisance free condition through its operational procedures. If particular wastes are creating a problem at a site, the operator may either correct the problem or refuse to accept the waste.

(b) What were the results of the water quality tests which were requested to be sent to the Board?

(b) No request was made to send samples to the Board.

28. Referring to the State's May 9, 1978 inspection report:
(a) What are the anticipated adverse environmental impacts of disposing of these particular oily wastes at GDL?

28. (a) The problem with the waste at the time of the inspection was how it was handled. Trenches were dug into already filled areas exposing refuse and creating the problems outlined in the answer to

Interrogatory 3(b). The situation also presented a hazard to any vehicular or pedestrian traffic which could inadvertently fall into the pit.

(b) What specific inadequacy was found with the daily cover?

(b) The daily cover had been removed to dig pits in the refuse for disposing of the oily waste.

29. Referring to the State's April 7, 1978 inspection report:

(a) Were any tests conducted upon the samples taken of the discharge?

29. (a) Yes.

(b) If so, produce the results of those tests.

(b) See Attachment C.

30. Referring to the State's April 7, 1978 report, what methodology was employed by the Inspectors to ascertain that the alleged insufficiently covered materials were materials dumped at the site on a date previous to the date of the inspection?

30. Professional knowledge and experience.

31. Referring to the State's March 15, 1978 inspection, could any of the ponded water on the site have been due to environmental factors, such as a spring melt or heavy rains, which are beyond the control of the operator? Discuss your answer in detail.

31. Yes, the ponded water could have been due to environmental factors; but, no, it is not beyond the control of the operator. The landfill should be graded on both filled and unfilled areas to promote runoff of surface water and to prevent ponding.

32. Other than the State's March 15, 1978 report, have any incidents of scavenging been detected by Inspectors at the site?

32. Yes, 8/24/79.

33. Admit or deny that prior to March 15, 1978, the operation of GDL was never deemed unacceptable by the State.

33. Deny.

34. Admit or deny that on October 15, 1976; August 10, 1976; July 14, 1976; April 5, 1976; December 2, 1975; June 4, 1975; April 1, 1975; and January 30, 1975, the overall operation of the site was rated "good" by the State.

34. Deny for October 15, 1976 as we have no record of an inspection on that date. Admit to good ratings on the rest of the dates.

35. Admit or deny that on December 17, 1974, the overall operation of GDL was rated "excellent" by the State.

35. Admit.

36. Does the State provide its Inspectors of solid/hazardous waste facilities with a training manual or any other similar document, containing guidelines, requirements, procedures, or recommendations

to be used by Inspectors in the course of their inspections? If so, produce said manual or documents, and all documents relating to said manual or documents.

36. No.

37. Does the State provide, or if not, send its potential Inspectors to, a training program of any kind, formal or informal, which individuals must attend and/or pass prior to becoming official Inspectos of the State of Indiana?

37. No, all training is on the job training and there is no test which will pass or fail an inspector.

(a) If so, discuss in detail the nature of such programs; produce all documents relating thereto; and provide proof that the Inspectors whose names appear in the inspection reports referred to in Interrogatory 6 above successfully completed such a program.

(a) Not applicable.

(b) What are the education and/or experience requirements demanded by the Board for landfill Inspectors.

(b) The minimum requirements are as follows:

Sanitarian V - General - Three (3) years full time paid professional experience in public or environmental health. Accredited college training may substitute for the required experience with a maximum substitution of three (3) years. (15 semester hours in MATHEMATICS, PHYSICS, CHEMISTRY, BIOLOGY, NATURAL RESOURCES, PUBLIC HEALTH or ENVIRONMENTAL HEALTH SCIENCES required.)

Sanitary Engineer V - Graduation from an accredited four-year college. (Major in ENGINEERING required) License to practice engineering in the State of Indiana may substitute for the above requirement.

(c) For those Inspectors which have participated in inspections of GDL, list
(i) the educational background of each Inspector including the degree conferred, the school from which the degree was conferred, the date of conferral;

(c) (i) Bruce H. Palin, Bachelor of Science in Electrical Engineering, Rose - Hulman Institute of Technology, May 1976.

George E. Oliver, Bachelor of Science in Environmental Health, Indiana State University, March 1973.

Stuart Miller, Bachelor of Science in Biology, Ball State University, August 1975.

(ii) the landfill-related work experience of each Inspector including, the length and type of experience each has had

(1) inspecting landfills for the State of Indiana;
(2) inspecting landfills for private organizations;
(3) managing or operating landfills;
(4) working at landfills.

(ii) (1) Bruce Palin - 4 years inspecting landfills and 2 years supervising the Engineering Review Section; George Oliver - 2 years experience inspecting sanitary landfill, Allegheney Co. Health Dept. Pittsburgh, PA., 6 1/2 years, one year experience, supervisor of industrial waste approval program; and Stuart Miller, 2 1/2 years as inspector for the state.

(2) None for neither inspector.

(3) None for neither inspector.

(4) None for neither inspector.

38. Is it a generally accepted practice by the State and/or its Inspectors not to place "cover" on a landfill until the end of the day when the landfill stops accepting wastes for that day?

38. Yes. Daily cover is to be applied at the end of the operating day under 320 IAC 5-5-13(b). The operating day is designated by the Sanitary Landfill Operator in the approved construction plan.

(a) If the answer to the above question is yes, how can an Inspector determine at a period of time when a landfill is continuing to accept wastes, whether cover for that day is or will be adequately applied to the landfill? Discuss this answer in detail.

(a) The rule presumes that an operator has management control over the operation of the facility, and that he has scheduled the operating day to include the hours for acceptance of waste, and an allowance of time to apply cover.

(b) If the answer to the main question contained in number 38 above is no:

(i) at what point in time does the State require that cover be applied?
(ii) cite any and all regulations, and refer to any and all documents establishing, relating to, and discussing such a requirement.

(b) Not Applicable.

(c) Produce any and all documents relating to and/or discussing the time when cover is to be applied under Indiana law.

(c) References may be found in 320 IAC 5 and the site construction plan.

D. SPECIAL PERMISSION LETTERS:

39. We have in our possession the following "Special Permission Letters" (as used herein, the term "Special Permission Letters" refers to those letters issued by the State granting authority to dispose of hazardous or special wastes pursuant to 320 IAC 5-5-14) issued by the State to GDL:

Date	Waste Type	Waste Quantity
1/14/81	Fly Ash	80,000 cubic yards for calendar year 1981
1/9/81	Asbestos	50 cubic yards (one-time-only basis
12/17/80	Pipe Insulating Asbestos Waste	300 cubic yards (one-time-only basis
12/9/80	Metal Shavings	25 cubic yards per year
10/30/80	Asbestos Contaminated Material	700 cubic yards (one-time-only basis
8/25/80	Asbestos	100 cubic yards (one-time-only basis
5/14/80	Asbestos	40 cubic yards per week for four weeks; 20 cubic yards every other week thereafter
5/13/80	Fly Ash	15,000 cubic yards
11/27/79	Aluminum Dross (Milling Dust and Slag)	300 tons per day until June 13, 1980
3/20/79	Furnace Brick, Pallets	Unspecified
4/28/78	Water and Vegetable Oil	4,000 gallons (one-time-only basis)
11/18/77	Herbicide	120 cubic yards (one-time-only basis)
9/6/77	Oily Waste From 6-stand Oil Recovery Unit	1,200 gallons per day
7/22/77	Filter Cake Kiln Scrubber Mud	1,500 pounds per week 3,000 pounds per week
6/3/77	API Separator Bottoms	200 cubic yards per year
6/1/77	Lime Sludge	80,000 gallons per month (not more than 4,000 gallons per day)
5/17/77	Asbestos Paper	105 cubic yards per week
5/12/77	Filter Cake Scrubber Mud	1,500 pounds per week 3,000 pounds per week (Temporary Approval)
4/25/77	Activated Biological Sludge	Unspecified
3/14/77	Calcium Sulfate	1.5 tons per day
3/14/77	Lime Waste	80,000 gallons per month
3/4/77	Youngstown Oil Sludge	Unspecified
10/7/76	Gypsum Wastes (ph 7.9)	Quantity Unspecified
10/4/76	Calcium Carbonate	30 cubic yards per day
4/12/76	Paint Sludges	25 cubic yards per day
2/20/76	Corn Starch and Carbon Filters	Unspecified
1/30/76	Lime Slurry	1,500 to 5,000 gallons per week
6/18/75	Neutralized Sludges	Temporary Approval
2/24/75	Dripolene	4 to 5 truckloads per week for 6 months

(a) Are the Special Permission Letters outlined above the only such letters issued by the State granting permission to any person or company to dispose of hazardous or special wastes at GDL? If not, list all other such letters and their date; specify the type of waste involved; identify whether such waste is an industrial waste, a RCRA hazardous waste, or both; and produce copies of such letters and all documents relating thereto.

39. (a) No. 3/19/77 Terminal Treatment Sludge Unspecified

6/16/75 Aluminum Oxide Sludge 40,000 lb/day

Both of these wastes are industrial wastes and at the time

of approval RCRA was not in effect. See Attachment D for copies of the above-referenced letters.

(b) Has the State ever orally granted special permission to dispose of special or hazardous waste at GDL and not followed up on such oral approval with a letter? If so, state the date of such approval; the generator and type of waste involved; and the amount and duration of the waste permitted to be disposed of.

(b) No knowledge of this occuring.

(c) Admit or deny that the above chart accurately sets forth the Special Permission Letters granted to GDL, and the type, amount, and duration of the disposal of such wastes. If you deny this statement, specify the inaccuracies, and set forth, in detail, a correct replacement chart.

(c) Deny. See answer to Interrogatory 39 (a).

(d) Admit or deny that the State could not and would not issue the above Special Permission Letters unless it determined that disposal of such wastes at GDL would not pose an unreasonable risk of harm to the environment or health of the citizens of Indiana.

(d) The state admits to exercising such caution and adds that it exercises the same regard for health and environment when it recalls permission letters upon subsequent discovery that disposal of such wastes is not being done in accordance with established standards and facility design.

(e) If Respondent denies subpart (d) above, then state in detail under what conditions the Board would issue a Special Permission Letter knowing that disposal pursuant to said letter would pose an unreasonable risk of harm to the environment or health of the citizens of Indiana.

(e) Not Applicable.

(f) Discuss in detail the considerations the Board addresses in reviewing a Special Permission Letter request and the factors which lead the Board to grant or deny such requests.

(f) In evaluating a request for a Special Permission Letter, the following criteria is used:

(A) With regard to the facility:

(1) Is the facility a sanitary landfill (SLF);

(2) Is the SLF on a phase-out or closure schedule;

(3) Are there permit conditions on the SLF permit that would restrict or limit the disposal of special or hazardous wastes;

(4) Does the facility have documented geologic limitations;

(5) Does the daily operational history of the facility show a record of consistent compliance with the regulations;

(6) Has leachate been identified on-site or flowing off-site;

(7) Are there any pending legal actions against the facility which would prohibit special waste approval; and

(8) The volume of solid waste at the facility.

(B) The waste material is evaluated to determine:

(1) If it is a RCRA hazardous waste or whether it exhibits any characteristics of a RCRA hazardous waste;

(2) The per cent of solids in the waste (if a liquid), or the water content of the waste;

(3) The industrial process from which the waste is generated to be aware of the chemical constituents involved;

(4) Whether the waste contains any chemicals or constituents which would contamirate ground or surface water;

(5) Whether the waste, by virtue of its volume, odor, physical state or other characteristic, would cause or threaten to cause adverse operational, safety or environmental effects at the SLF.

(g) Produce any and all documents relating to your responses to Interrogatory 39.

(g) None.

40. Regarding each entry contained in the chart in Interrogatory 39 above, for each waste and entry listed, state whether each waste is an industrial waste, a RCRA hazardous waste, or both. Discuss in detail the categorization of each waste, the properties that render each waste "hazardous," and produce all documents relating to this Interrogatory.

40. All entries are industrial waste. Any approval prior to November 19, 1980 was not subject to RCRA so the determination as to whether a waste was a RCRA hazardous waste was not applicable. The burden of determining whether a waste is RCRA hazardous, or not, is on the generator.

41. Admit or deny that a Special Permission Letter which grants the right to dispose of a particular waste at a given rate per unit of time (e.g. 40 cubic yards per week) remains in effect until the permission expires of its own terms or until the State takes further action regarding said permission. If Respondent denies this statement, then discuss in detail the ways such a Special Permission Letter becomes ineffective and invalid. Produce documents relating to this Interrogatory.

41. Admit.

42. For each waste set forth in the chart in Interrogatory 39 above, discuss in detail the reasons why GDL cannot and should not continue accepting such wastes; the potential risk to the environment and health of the citizens of Indiana associated with continued acceptance of each such waste in like quantities at GDL; why disposal of such waste now is denied while it was previously permitted; and produce all documents relating to this Interrogatory.

42. Fly ash, aluminum dross, water and vegetable oil, herbicide, oil wastes, filter cake/kiln scrubber mud, API separator bottoms, lime sludge, filter cake scrubber mud, activated biological sludge, calcium sulfate, lime waste, Youngstown oil sludge, gypsum wastes, calcium carbonate, paint sludges, corn starch and carbon filters, lime slurry, neutralized sludges, and dripolene are not acceptable at GDL because of their potential for adding free liquids to the landfill, generation of leachate and other concerns of ground and water contamination detailed in the reply to Interrogatory 3(d), and because the facility does not meet the facility criteria stated in the reply to Interrogatory 39(f).

Calcium carbonate, although inert, can add free liquids to the facility if in sludge form, and if dry, is an air pollution or nuisance problem if improperly disposed of.

Asbestos, pipe insulating asbestos waste, asbestos contaminated material and asbestos paper, are a significant health hazard. Special safeguards must be taken to landfill asbestos wastes so they cannot become airborne. Because of GDL's inconsistent operating record and other considerations under the policy stated in the reply to Interrogatory 39(f), the Board does not think it is prudent to further allow the facility to accept such wastes.

Furnace brick, pallets, and metal shavings, are not normally considered special or hazardous wastes under 320 IAC 5 and would be acceptable at GDL unless they are associated with other wastes which have environmental, health or nuisance impacts. However, in this case, the metal shavings were associated with over 90% liquids which rendered it unsuitable for disposal at GDL.

The reason why wastes previously approved are no longer acceptable now, is because the Board's policy regarding acceptance of industrial waste has become more stringent.

43. Have any state inspections of GDL revealed improper disposal practices relating to the disposal of each waste listed in the chart in Interrogatory 35 above? If so, discuss in detail the alleged impoper practices, the dates on which these improper practices were observed, the potential environmental problems associated with said practices, and produce all documents relating to this Interrogatory.

43. Yes. See inspection reports dated 3/15/78, 5/9/78, 11/30/78, 10/30/79, 11/14/80, 8/20/81, with reference to answers to Interrogatories

3(b), 3(c) and 3(d) regarding environmental, health, safety, and nuisance concerns.

44. GDL received permission to accept the following listed wastes:

Waste Type	Permission Letter Date	Amount Allowed
API Separator Bottoms	6/3/77	200 cubic yards
Paint Sludges	4/12/76	25 cubic yards
Solid Corn Starch	2/20/76	Unspecified
Carbon Filters from Corn Syrup Filtering Process	2/20/76	Unspecified
Lime Sludges	6/1/77	80,000 gallons per month
Lime Waste	3/14/77	80,000 gallons per month
Calcium Carbonate	10/4/76	30 cubic yards per day
Lime Sludge	1/30/76	1/500 to 5,000 gallons per week
Activated Biological Sludge	4/25/77	Unspecified
Calcium Sulfate	3/14/77	1.5 tons per day
Gypsum Wastes	10/7/76	Unspecified

For each of the above-mentioned wastes, answer the following questions:

(a) Admit or deny that permission was received by GDL to receive this waste.

44. (a) Admit.

(b) Is each waste listed an industrial waste, a RCRA hazardous waste, or both? Cite the authority for, and the regulations supporting, this categorization.

(b) Each of the wastes listed in Item 39 is, under the terms of Petitioner's Interrogatories, an industrial waste, the disposal of which has been approved on a case-by-case basis under 320 IAC 5-5-14. Under the RCRA rule, 320 IAC 4-3-1 (40 CFR 261.3), any of those wastes could be RCRA hazardous wastes if they:

(1) exhibited a characteristic of hazardous waste under 40 CFR 261.21 through and including 40 CFR 261.24; or

(2) were, or were mixed with, a waste listed under 40 CFR 261.31 through and including 40 CFR 261.33.

Since those rules were promulgated by EPA on May 19, 1980, after the dates of the permissions, there was no opportunity to ascertain at the time whether those wastes were RCRA wastes.

(c) Admit or deny that the above approvals to accept each waste listed were given on a continuing basis? If you deny this statement, discuss your response in detail.

(c) Deny. Lime waste approved on 3/14/77 was a temporary approval and was replaced by the lime sludge approval dated 6/1/77. The

list contains inaccuracies concerning periods of time, i.e., "API Separator Bottoms 6/3/77 200 cubic yards/" year.

(d) For each waste identified above, discuss in detail the anticipated adverse environmental impacts of continued disposal of these materials at GDL.

(d) The adverse environmental impacts would be as outlined in answer to Interrogatory 10 (g).

(e) In the past, have inspections revealed any improper dumping practices relating to the disposal of these wastes identified above? If so, discuss in detail the specific instances and problems, give the dates of the inspections, and produce all documents relating thereto.

(e) No, but there are no reports that indicate an inspector has witnessed the disposal of those materials at the site.

(f) Discuss in detail the State's reasons for denying approval to Gary Landfill to accept each waste listed above in the future?

(f) As outlined in the answer to Interrogatory 39(f), the determination of whether special wastes may be deposed of at a particular facility is based on a two-pronged test: (1) whether the facility is in a good geological setting and whether it has a good operational history; and (2) the characteristics of the waste. Because of the poor geological setting at GDL coupled with inadequate construction of the facility and the low percentage of acceptable inspections during the past two years, GDL is categorically an unacceptable facility for industrial (special or hazardous under 320 IAC 5) wastes including all the wastes specified in this Interrogatory.

E. MISCELLANEOUS:

45. What specific corrective actions do you contend are necessary to place the landfill in compliance with the applicable state laws and regulations and to enable GDL to accept hazardous and/or industrial wastes?

45. There are no corrective actions which could be applied to GDL to enable that facility to accept hazardous and/or industrial wastes.

46. Identify each person the State plans to call as a witness at the hearing of this matter, each person's address and telephone number (business or personal), and state in reasonable detail the anticipated testimony of each.

46. George Oliver
Indiana State Board of Health
1330 West Michigan Street
Indianapolis, IN 46206
317/633-0213

Inspection of site, review of construction plans, approvals for special waste.

Bruce Palin
Indiana State Board of Health
1330 West Michigan Street
Indianapolis, IN 46206
317/633-0203

Inspection of site, review of construction plans.

Karyl Schmidt
Indiana State Board of Health
1330 West Michigan Street
Indianapolis, IN 46206
317/633-0197

Geology of site, review of construction plans, and monitoring wells.

Stuart Miller
Indiana State Board of Health
1330 West Michigan Street
Indianapolis, IN 46206
317/633-0742

Inspection of site

Steve Wakefield
Indiana State Board of Health
1330 West Michigan Street
Indianapolis, IN 46206
317/633-0815

Previous Hazardous Waste Representative

Ted Warner
Indiana State Board of Health
1330 West Michigan Street
Indianapolis, IN 46206
317/633-8525

Current Hazardous Waste Representative

Joseph L. Tite
815 Franklin Square
P. O. Box 366
Michigan City, IN 46360
219/872-3522

Construction plans and techniques

47. Produce all inspection reports of, and Special Permission Letters granted relating to, the following landfills:

(a) the Wheeler Landfill;
(b) the City of Gary Landfill;
(c) the City of Munster Landfill; and
(d) the J&D Landfill.

47. These documents are on file in the Division of Land Pollution Control offices and are open to the public for inspection and photocopying.

48. If any of the landfills listed in Interrogatory 47 above may lawfully accept industrial wastes, discuss in detail the reasons therefor, and the specific reasons for treating any of these landfills differently from GDL.

48. Board actions regarding the facilities in Interrogatory 47 are documented in the files. The basis of Board actions authorizing disposal of industrial (special or hazardous under 320 IAC 5) wastes at those facilities would be predicated on the policy stated in the reply to Interrogatory 39(f).

Respectfully submitted,

Linley E. Pearson,
Attorney General
State of Indiana

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

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing, "Respondent's Answers to Petitioner's First Set of Interrogatories, Requests for Admissions and Requests for the Production of Documents," has been duly served upon all counsel of record listed below, bu United States Mail, First Class, postage prepaid, this 27th day of September, 1982.

John M. Kyle III
BARNES & THORNBURG
1313 Merchants Bank Building
Indianapolis, Indiana 46204

Vic Indiano
BARNES & THORNBURG
1313 Merchants Bank Building
Indianapolis, Indiana 46204

Mathew S. Scherschel
Mathew S. Scherschel
Deputy Attorney General

Office of the Attorney General
219 State House
Indianapolis, Indiana 46204
Telephone: (317) 232-6304

Reference PP
Renewal of Operational Permit
2-16-82

February 16, 1982

VIA CERTIFIED MAIL

Mr. Lawrence Hagen
Gary Development Company, Inc.
479 North Cline Avenue
P.O. Box 6056
Gary, IN 46406

Dear Mr. Hagen:

Re: Renewal of Operating Permit
for Sanitary Landfill Operation
Gary Development Landfill
Lake County

The review of information submitted in your application for renewal of an operating permit for a sanitary landfill which we received on November 17, 1980, has been completed. The sanitary landfill project, located in that part of the W 1/2 of the SW 1/4 of Section 35 lying north of the Grand Calumet River, T37N, R9W, containing approximately 61.9 acres, was issued a construction plan permit on June 21, 1973. This facility shall be operated in accordance with Rule 330 IAC 4-1, et seq. (Regulation SPC-18), and Construction Plan Permit SW 133.

The above-referenced sanitary landfill project is hereby granted a renewal of Operating Permit No. 45-2, with the following conditions:

1. That sandy, granular material under the unified soil Classification of SW and SP not be used for daily cover.

2. That the clay perimeter seal be compacted to 90% Standard Proctor density.

3. That results of compaction tests conducted on the perimeter seal be submitted to the Division of Land Pollution Control staff within 15 days of completion of the tests.

4. That after each section of leachate collection pipe is installed, it be inspected by a Division of Land Pollution Control staff member before it is covered.

5. That the discharge of water from the site to the Grand Calumet River or other waters of the State of Indiana shall not occur except in conformity with an approved NPDES permit.

6. That the seepage collector pond detailed on Page 7 of the Engineering Plan not be installed unless a seepage problem is identified. If a seepage problem is identified, a temporary collector pond must be located as close as possible to the area until seepage is properly sealed.

7. That the dike between the Grand Calumet River and the landfill be increased in elevation to 589.7 MSL.

8. That the four on-site monitoring wells be sampled on a quarterly basis. The sampling months are January, April, July, and October with samples to be taken and analyzed at the end of each of these months and results submitted by the end of the following month. Parameters to be tested include Chloride, Chemical Oxygen Demand, Total Hardness, Total Iron, and Total Dissolved Solids.

9. That hazardous waste as defined in 330 IAC 4-2-1 not be accepted at this site after 60 days from date of receipt of this letter. All current hazardous waste approvals for this site will be considered void at that time.

If you, as applicant, find that the terms and conditions of this permit are objectionable, you may petition for a hearing before the Environmental Management Board within fifteen (15) days after the date of receipt of this permit in accordance with Indiana Code 13-7-10-4(a).

If you have any questions regarding this matter, please contact Mr. Mark Richards of the Division of Land Pollution Control at 317/633-0657.

The operating permit is enclosed. Please post the permit and this letter in a conspicuous location at the site.

Very truly yours,

Ralph C. Pickard
Technical Secretary

MAR/tr
Enclosure
cc: City of Gary Health Department
Attn.: Dr. Earl Caldwell
bcc: Approval Book
Mr. George Oliver
tr 0928m 2/4/82

Ren. OPP & Iss. Amend. CPP SW 133/Gary

Day, L. T. Lake Co.

rk

SENDER: Complete items 1, 2, and 3. Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one.)

☒ Show to whom and date delivered.....¢

☐ Show to whom, date and address of delivery.....¢

☐ RESTRICTED DELIVERY
Show to whom and date delivered.....¢

☐ RESTRICTED DELIVERY.
Show to whom, date, and address of delivery.$____

(CONSULT POSTMASTER FOR FEES)

2. ARTICLE ADDRESSED TO: 66-01
Mr. Lawrence Hagen
Gary Development Company, Inc.
479 North Cline Avenue
P. O. Box 6056
Gary, IN 46406

3. ARTICLE DESCRIPTION:

REGISTERED NO.	CERTIFIED NO.	INSURED NO.
	54639	

(Always obtain signature of addressee or agent)

I have received the article described above.

SIGNATURE ☐ Addressee ☐ Authorized agent

4. DATE OF DELIVERY
2-22-82

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE:

CLERK'S INITIALS

FEB 22 1982

RETURN RECEIPT (ALWAYS REQUESTED, INSURED AND CERTIFIED MAIL)

☆GPO : 1979-306-459

February 16, 1982

VIA CERTIFIED MAIL

Mr. Lawrence Hagen
Gary Development Company, Inc.
479 North Cline Avenue
P.O. Box 6056
Gary, IN 46406

Dear Mr. Hagen:

Re: Issuance of Amendment to Construction Plan Permit SW 133, Gary Development Landfill, Lake County

You are hereby notified that the Technical Secretary of the Environmental Management Board approved the amended plans and specifications for the above-referenced landfill project on this date.

The project consists of constructing a leachate collection system and perimeter barrier seals to prevent leachate migration from the site. The proposed final topography has been modified to increase landfill capacity. The landfill is located in that part of the W 1/2 of the SW 1/4 of Section 35 lying north of the Grand Calumet River, T37N, R9W, and contains approximately 61.9 acres.

The amendment to Construction Plan Permit SW 133 is hereby approved with the following conditions:

1. That sandy, granular material under the unified soil Classification of SW and SP not be used for daily cover.

2. That the clay perimeter seal be compacted to 90% Standard Proctor density.

3. That results of compaction tests conducted on the perimeter seal be submitted to the Division of Land Pollution Control staff within 15 days of completion of the tests.

4. That after each section of leachate collection pipe is installed, it be inspected by a Division of Land Pollution Control staff member before it is covered.

5. That the discharge of water from the site to the Grand Calumet River or other waters of the State of Indiana shall not occur except in conformity with an approved NPDES permit.

6. That the seepage collector pond detailed on Page 7 of the Engineering Plan not be installed unless a seepage problem is identified. If a seepage problem is identified, a temporary collector pond must be located as close as possible to the area until seepage is properly sealed.

7. That the dike between the Grand Calumet River and the landfill be increased in elevation to 589.7 MSL.

8. That the four on-site monitoring wells be sampled on a quarterly basis. The sampling months are January, April, July, and October with samples to be taken and analyzed at the end of each of these months and results submitted by the end of the following month. Parameters to be tested include Chloride, Chemical Oxygen Demand, Total Hardness, Total Iron, and Total Dissolved Solids.

9. That hazardous waste as defined in 330 IAC 4-2-1 not be accepted at this site after 60 days from date of receipt of this letter. All current hazardous waste approvals for this site will be considered void at that time.

If you, as applicant, find that the terms and conditions of this permit are objectionable, you may petition for a hearing before the Environmental Management Board within fifteen (15) days after the date of receipt of this permit in accordance with Indiana Code 13-7-10-5(b).

If you have any questions regarding this matter, please contact Mr. Mark Richards of the Division of Land Pollution Control at 317/633-0657.

Very truly yours,

Ralph C. Pickard
Technical Secretary

MAR/tr

cc: City of Gary Health Department
Attn.: Dr. Earl Caldwell
bcc: Approval Book
Mr. George Oliver
tr 0929m 2/4/82

Reference QQ
Appealing the Operational Permit and Amendment to Construction Plan Permit
3-8-82

LAW OFFICES OF
TERRY K. HIESTAND
P. O. BOX 555
CHESTERTON, INDIANA 46304

Certified

MAR 11 10 25 AM '82

DIV. OF LAND POLLUTION CONTROL
STATE BOARD OF HEALTH

TERRY K. HIESTAND
GREGORY T. BABCOCK

117 BROADWAY
219/926-2188

March 8, 1982

Environmental Management Board
State of Indiana
1330 West Michigan Street
P.O. Box 1964
Indianapolis, Indiana 46206

RE: Renewal of Operating Permit for Sanitary Landfill Operation, Gary Development Landfill, Lake County
and
Issuance of Amendment to Construction Plan Permit SW 133, Gary Development Landfill, Lake County

Gentlemen:

With regard to the above matters, I have been retained by the applicant, Gary Development Company, Inc., to appeal the terms and conditions of the above renewal and approval of amended plans and specifications, as outlined in your letters dated February 16, 1982, and received by my client on February 22, 1982.

Please construe this letter as my client's petition for a hearing before your Board pursuant to Indiana Code, I.C. 13-7-10-5 (b).

It appears that the terms and conditions attached to each of the above approvals are identical. As stated, my client will not be able to comply with those conditions, and, unless relief can be obtained, my client will have to cease further operations.

Please advise the writer at such time as a hearing has been scheduled; in the meantime, my client and I would welcome the opportunity to meet with representatives of your staff for the purpose of exploring alternate conditions with them and further explaining our objections to the conditions as stated. Should you have any questions regarding the status of this matter in the meantime, please do not hesitate to contact me.

Very truly yours,

LAW OFFICES OF TERRY K. HIESTAND

Terry K. Hiestand

Terry K. Hiestand
Attorney at Law

TKH/jej
cc: Mr. Lawrence Hagen (Gary Development Company, Inc.)
CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Reference RR
IDEM Office Memorandum Regarding The
Appealing the Operational Permit and Amendment to Construction Plan Permit
4-19-92

STATE OF INDIANA

ENVIRONMENTAL MANAGEMENT BOARD

INDIANAPOLIS, 46206

1330 West Michigan Street
P.O. Box 1964

April 19, 1982

TO: Hon. Linley Pearson
Attorney General

Attention: Brenda Rodeheffer
Coordinator, Environmental Law Section

FROM: Ralph C. Pickard
Technical Secretary

SUBJECT: Request for Representation
Gary Development Landfill
Lake County

The Gary Development Landfill has been issued an amendment to its construction permit and a renewal of its operating permit, both with conditions. Pursuant to IC 13-7-10-5(b), the Gary Development Company, Inc., has appealed these conditions and request a hearing on this matter. See attached summary and copy of their request. Consequently, in accordance with the authorization granted the Technical Secretary by the Environmental Management Board, a hearing officer has been appointed to schedule a hearing date for this matter.

It is hereby requested that you appoint an attorney to represent the staff of the Division of Land Pollution Control in the proceedings. Please contact Mr. William Morgan of the Facility Inspection Section or Mr. Dan Magoun so that a meeting may be scheduled to further discuss this matter. Enclosed are copies of relative material in this matter.

SM/jb
Enclosure
cc: Wayne Penrod
Dan Magoun

STATE BOARD OF HEALTH

INDIANAPOLIS

OFFICE MEMORANDUM

DATE: April 19, 1982

TO: Ralph C. Pickard, Technical Secretary
Environmental Management Board

THRU:

FROM: William Morgan
Facility Inspection Section

SUBJECT: Request for Hearing
Gary Development Landfill
Lake County

Gary Development Landfill has been issued an amendment to its construction permit and a renewal of its operating permit, both with conditions. They have since appealed these conditions and request that a hearing be held on this matter. A complete summary is attached along with a copy of their request.

Therefore, pursuant to the authority delegated to you by the Environmental Management Board, it is requested that a hearing officer be appointed so that he may establish a time and place for a hearing to resolve this matter.

SM/jb
Attachments
cc: Wayne Penrod
Ben Magoun

3

STATE BOARD OF HEALTH

INDIANAPOLIS

make a file

OFFICE MEMORANDUM

DATE: April 19, 1982

TO: James M. Garrettson
Water Pollution Control

THRU:

FROM: Ralph C. Pickard, Technical Secretary
Environmental Management Board

SUBJECT: Assignment as Hearing Officer

This is to advise you that you have been appointed by me to serve as hearing officer on behalf of the Environmental Management Board in the following matter:

Appeal of Permit Conditions by Gary Development Landfill
Lake County

A copy of the technical staff's request for hearing is enclosed for your information. Please have a Cause No. assigned, schedule times and places for a prehearing conference and hearing in this matter, and prepare the appropriate notice for my signature.

SM/jb
Enclosure

Summary
Request for Hearing
Gary Development Landfill
Lake County

On June 21, 1973, Oral H. Hert, Technical Secretary, approved the construction of a sanitary landfill located on Cline Avenue, north of the Grand Calumet River within the SW¼ of Section 35, T37N, R9W, in Lake County containing approximately 62 acres.

On February 20, 1975, Oral H. Hert, Technical Secretary, approved the operation of this site and issued Operating Permit No. 45-2.

On March 2, 1977, a prehearing conference was held with Mr. Larry Hagen of the above-mentioned facility to prepare an Agreed Order for the site to submit modified plans, correct leachate discharges, and discontinue accepting unapproved industrial waste. Mr. Hagen subsequently refused to sign this Agreed Order.

On June 15, 1979, another prehearing conference was held in East Chicago. At this time another Agreed Order was established for continued operation of this site and Mr. Hagen indicated he would sign this one. During this two year period, some hearings were held with Mr. Hagen but were continued due to attorney changes and time conflicts.

On May 20, 1980, the Stream Pollution Control Board adopted the previously negotiated Agreed Order, Cause No. B-406. The Agreed Order specified that this would be a provisional operating permit for one year from date of approval. It also specified many conditions for operation.

On February 16, 1982, an amendment to the Construction Plan Permit SW 133 was issued with conditions and on that same date a renewal of Operating Permit No. 45-2 was issued with conditions also. A copy of each letter is attached.

On March 11, 1982, the Board received a request from Mr. Hagen's attorney, Terry K. Hiestand, appealing the conditions of the operating permit renewal letter and the construction plan amendment letter both of February 16, 1982. This letter also requested that a hearing be held pursuant to IC 13-7-10-5(b).

Recommendation: Staff recommends that a hearing officer be appointed and allowed to schedule the time and date of a hearing to resolve this matter.

SM/jb
Attachment

Reference SS
Petitioner's answers to Respondents First set on Interrogatories
12-10-82

Gary's answers to State Questions

File

BARNES & THORNBURG

1313 MERCHANTS BANK BUILDING
INDIANAPOLIS, INDIANA 46204

TELEPHONE (317) 231-1313 TELECOPIER (317) 261-9433

TWX 810-341-3427 JCH ATTYS IND

SIXTH FLOOR, 1ST SOURCE BANK BUILDING
SOUTH BEND, INDIANA 46601
(219) 232-1171

FIRST NATIONAL BANK BUILDING
301 SOUTH MAIN STREET, SUITE 305
ELKHART, INDIANA 46516
(219) 293-0681

SUITE 200
2000 L STREET, N.W.
WASHINGTON, D.C. 20036
(202) 296-2630

INDIANA STATE BOARD OF HEALTH DIVISION OF WATER

JERRY P. BELMAR
ROBERT S. BAHST
LOUIS A. HIGHMARK
JOHN K. HOUGHTON
WARREN E. MCGILL
WARREN K. DZAHL
JOHN L. CAREY
GEORGE J. KAZAS
THOMAS L. MURRAY
JOHN R. HARMAN
HOWARD J. COFIELD
RICHARD M. TRECHELO
EUGENE C. MILLER, JR.
WILLIAM J. REINKE
RICHARD E. DEER
EDWARD J. GRAY
ROBERT E. HOFFIELD
DANIEL W. TUDY
JACK C. DUNFEE, JR.
HENRY J. PRICE
HERBERT C. SNYDER, JR.
JAMES A. MCDERMOTT
SHIRLEY A. SHIDELER
ROBERT H. REYNOLDS
CHARLES E. BRUESS
WILLIAM R. COFFEY
BRUCE R. BANCROFT
JOHN T. MURVIHILL
FRANKLIN A. MORSS II
STEPHEN A. SEALL
GORDON S. ESLICK
RICHARD E. STEINBRONN
JOHN R. BURGESS
H. KENT HOWARD
ROBERT P. JOHNSTONE
TOM CHARLES HUSTON
JAMES A. STRAIN
GEORGE T. BAKER
TONI BUCK
R. MICHAEL PARKER
NELSON J. MODEL, JR.
ROGER W. RENKO
DAVID R. HELTON
BRIAN J. LAKE
BRYAN O. WADLER
DANIEL H. FITZGIBBON
STEPHEN W. SMITH
RICHARD W. MORGAN
MICHAEL R. FRUENWALD
EDWARD O. DELANEY
CYN H. LOWELL
SAMUEL S. THOMPSON
BRUCE R. KARR
DONALD E. KNEBEL
WAYNE C. KREUSCHER
KRISTIN G. FRUENWALD
DANIEL W. MCGILL
KENT D. AGNESS
MICHAEL R. CONNER
CLAUDIA V. SVIHLIK
ROBERT K. BELLAMY
CATHERINE L. BRIDGE
RICHARD D. CONARD

OF COUNSEL
ALAN W. BOYD
CHARLES W. WELLS
THOMAS M. BEAMON
JAMES F. THORNBURG
FREDERIC D. ANDERSON
LESTER IRONS
LESTER M. WONDER
DONALD O. EVENSON *
THOMAS P. JENKINS
EVERET K. SMITH
JERRY S. HYLAND
DAVID H. BADGER
JOHN J. METTS

LARRY J. STROBLE
MICHAEL ROSIELLO
LYNN BRUNDAGE
STEPHEN W. LEE
DAVID A. HAIST
STANLEY C. FICKLE
WILLIAM L. JOHNS
A. JAMES RICHARDSON
ERNEST J. SZARWARK
PAUL E. BECHER
JAMES C. MAHONEY
DAVID M. POWLEN
EDWIN B. WAINSCOTT
MICHAEL P. LUCAS
DAVID L. SNIDER
RENEE A. MCWHINNEY
JOHN P. GREELEY
MARCUS B. CHANDLER
DAVID T. SHIVELY
JOHN J. KISH
DOUGLAS P. LONG
STEPHEN L. SMITH
JOHN M. KYLE III
JAMES A. COLES
MILDRED L. CALHOUN
JOHN C. ROTHHAAR
DOUGLAS K. GIESERLY
SANDRA J. LONG
DOUGLAS E. STARKEY
ROBERT J. SMITH, JR.
CONNIE M. MERKAN
SANDRA L. HERKE
BRUCE B. MARR
JEFFREY J. TONNER
GREGORY L. KELLY
PATRICK J. O'NEIL
MARK R. WENZEL
JAMES B. LOOTENS
NANCY L. MARSHALL
ANNE N. DEPREZ
RICHARD A. COHEN
DONALD C. C. LEIGHT
E. VICTOR INDIANO
ALAN A. LEVIN
FRANK SULLIVAN, JR.
KENNETH R. PETRINI
KENNETH H. INGNELP
KATHLEEN K. BRICKLEY
ALAN K. MILLS
JOSEPH W. REGONE

* NOT ADMITTED IN INDIANA

TO CALL WRITER DIRECT
(317) 261-9284

December 10, 1982

Mr. James M. Garrettson
Hearing Officer
Environmental Management Board
1330 W. Michigan Street
Indianapolis, IN 46206

Re: Gary Development Landfill Permit

Dear Jim:

Please find enclosed our "Agreed Extension Of Time For Answering Requests For Admissions And Requests For Production Of Documents" and the "Order". Please call me if you have any questions.

Sincerely,

John M. Kyle III

John M. Kyle, III

JMK/cs

Enclosures

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.

THE ENVIRONMENTAL MANAGEMENT BOARD OF THE STATE OF INDIANA,

Respondent.

CAUSE NO. N-53

AGREED EXTENSION OF TIME
FOR ANSWERING REQUESTS FOR ADMISSIONS
AND REQUESTS FOR PRODUCTION OF DOCUMENTS

Comes now Petitioner, by counsel, and shows the Hearing Officer that the parties have reached an agreement in this matter and Petitioner therefore agrees to an indefinite extension of time for Respondent to answer Petitioner's Request For Admissions and Requests For The Production Of Documents (Second Set). Petitioner expressly reserves the right to reinstate these requests in the event that an Agreed Order is not signed by the parties, signed by the Hearing Officer, or approved by the Environmental Management Board.

WHEREFORE, Petitioner requests that the Hearing Officer grant an indefinite extension of time in which Respondent has to respond to Petitioner's Requests For Admissions and Requests For The Production of Documents (Second Set), and for all other necessary and appropriate relief.

Respectfully submitted,

John M. Kyle, III

E. Victor Indiano

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing "AGREED EXTENSION OF TIME FOR ANSWERING REQUESTS FOR ADMISSIONS AND REQUESTS FOR PRODUCTION OF DOCUMENTS" has been served on the Respondent this 10th day of December, 1982, by United States mail, first-class, postage prepaid.

John M. Kyle, III

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.

THE ENVIRONMENTAL
MANAGEMENT BOARD OF
THE STATE OF INDIANA,

Respondent.

CAUSE NO. N-53

ORDER

Comes now Petitioner, by counsel, and files an "Agreed Extension Of Time For Answering Requests For Admissions And Requests For Production Of Documents" in the following words and figures, to wit:

[H.I.]

And the Hearing Officer being duly advised hereby ORDERS that Respondent shall not be required to respond to Petitioner's "Requests For Admisssions And Requests For The Production Of Documents (Second Set)", until further order of the Hearing Officer.

James Garrettson
Hearing Officer

Notice to:

John M. Kyle, III
BARNES & THORNBURG
1313 Merchants Bank Building
Indianapolis, IN 46204

Mathew S. Scherschel
Deputy Attorney General
Counsel for Environmental Management
Board of the State of Indiana
Room 219, State House
Indianapolis, IN 46204

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

BEFORE THE ENVIRONMENTAL MANAGEMENT BOARD OF THE STATE OF INDIANA

IN THE MATTER OF
GARY DEVELOPMENT COMPANY, INC.,

Petitioner,

v.

THE ENVIRONMENTAL MANAGEMENT BOARD OF THE STATE OF INDIANA,

Respondent.

CAUSE NO. N-53

PETITIONER'S ANSWERS TO RESPONDENTS FIRST SET OF INTERROGATORIES, REQUESTS FOR ADMISSIONS AND REQUESTS FOR THE PRODUCTION OF DOCUMENTS

Comes now the Petitioner, Gary Development Company, Inc., by counsel, and states the following responses and objections to Respondent's First Set of Interrogatories, Requests for Admissions and Requests for the Production of Documents.

A. OWNERSHIP OF LANDFILL AND STATUS OF CORPORATION

INTERROGATORY NO. 1. The original application for a construction permit for the Petitioner's site indicates that Gary Land Development Company, Inc., was the owner.

(a) Discuss in detail the relationship between said company and Gary Development, Inc. (hereafter referred to as "Petitioner").

(b) Identify the title holder for the real property for the subject landfill site. Describe in detail Petitioner's relationship to the title holder.

(c) Is Petitioner a corporation currently in good standing with the State of Indiana and supply a certificate stating such from the Secretary of State.

(d) List all corporate officers for Gary Development, Inc., including title, name, and address.

(e) Discuss in detail Larry Hagen's authorities, duties and responsibilities for the Petitioner.

(f) Produce all documents relating to your responses to the questions and requests for admissions contained in Interrogatory 1 and all subparts hereto.

ANSWER. (a) "Gary Land Development Company, Inc." and "Gary Development, Inc." are both misnomers foisted upon Gary Development Company, Inc. through clerical error.

(b) Gary Development Company, Inc. Petitioner and Gary Development Company, Inc. are the same legal entity and title holder to the property.

(c) Yes. The Certificate of Good Standing is a matter of public record and is as easily, if not more easily, obtainable by Respondent as by Petitioner.

(d) William M. Nanini
President and Treasurer
479 North Cline Avenue
P. O. Box 6056
Gary, Indiana

Henry Leyva
Secretary
479 North Cline Avenue
P. O. Box 6056
Gary, Indiana

Lawrence H. Hagen
Executive Vice President
479 North Cline Avenue
P. O. Box 6056
Gary, Indiana

(e) Mr. Hagen is responsible for overall construction and operation of the Gary Development Landfill.

(f) The deed for the property is recorded in the Lake County Recorder's office, is a matter of public record, and is available for inspection during normal business hours. Petitioner agrees to make any other specified documents available for inspection at a mutually agreed upon time at the Gary Development Company, Inc., offices and at the offices of Mr. James Nannini, the company's accountant. Mr. Nannini's offices are at 7703 Sussex Creek Drive, Darien, Illinois 60559.

B. DAILY OPEARTION OF LANDFILL

INTERROGATORY NO. 2. According to the construction plans the Petitioner's landfill operating hours, during which refuse is accepted for disposal, are from 7:00 a.m. to 4:00 p.m., Monday through Friday, and 7:00 a.m. to 11:00 a.m. on Saturday.

(a) Admit or deny that these are the actual hours of operation. If the response is one of denial list the actual operating hours.

(b) Admit or deny that Mr. Hagen is on-site during the outlined operating hours.

(c) If the response to Interrogatory 2(b) is one of denial give the name, address and phone number of the person responsible for the operation of the site during Mr. Hagen's absence.

(d) Admit or deny that waste is disposed of at the site after the designated operating hours.

(e) If the answer to Interrogatory 2(c) is admit, discuss those situations that result in after hour disposal and include a description of the waste and its quantity, the name of the waste generator, and the name of the hauler of the waste.

(f) Admit or deny that Mr. Hagen, or his designee, inspects the landfill at the end of each operating day to

determine that all refuse has been covered with a minimum of six inches of cover soil.

(g) Admit or deny that all solid waste is covered with a minimum of six inches of soil at the end of each operating day.

(h) Admit or deny that fly ash or shredder material has been used in lieu of daily soil cover.

(i) If your response to any of the above requests for admissions is one of denial, explain in detail the reason for your denial.

(j) Is there a security guard present on-site after operating hours? If so, what is his name, address, and telephone number.

(k) Is a daily operational log or record kept on any of the following:

(i) Amount of refuse accepted for disposal.

(ii) Results of inspections of the facility by the operator.

(iii) Equipment utilized on site.

(iv) Equipment breakdowns.

(v) Weather conditions.

(vi) Rental of back up equipment.

(vii) Construction activities.

(l) If the answer to Interrogatory 2(j) is one of admission produce a copy of the log or record.

ANSWER. (a) Deny. The above outlined hours are the landfill's normal operating hours. There are occasions when the landfill has been closed during these hours. There are also occasions when waste has been accepted at times other than normal operating hours.

(b) Deny, although Mr. Hagen is frequently on-site.

(c) Lawrence Hagen, Jr.
479 North Cline Avenue
P. O. Box 6056
Gary, Indiana
219-944-7858

(d) Admit to the extent that waste is sometimes disposed of at times other than normal operating hours.

(e) Not applicable. No admission was requested in Interrogatory 2(c).

(f) Admit.

(g) Admit.

(h) Deny.

(i) With respect to Interrogatory 2(a), see the answer to Interrogatory 2(a). With respect to Interrogatory 2(b), Mr. Hagen is not on site during lunch periods, vacations, sick days and other times when his presence is required elsewhere. With respect to Interrogatory 2(h), shredder material has been used in addition to daily cover soil, to serve as a traction aid for vehicles driving on the landfill.

(j) Yes. The security guards currently employed by Gary Development Company, Inc. include:

Bud Martin
479 North Cline Avenue
Avenue P. O. Box 6056
Gary, Indiana
219-885-9481

Brian Boyd
479 North Cline
P. O. Box 6056
Gary, Indiana
219-885-9481

William Essary
479 North Cline Avenue
P. O. Box 6056
Gary, Indiana
219-885-9481

Ray Burton
473 North Cline Avenue
P. O. Box 6056
Gary, Indiana
219-885-9481

(k) (i) Yes.

(ii) No.

(iii) No.

(iv) Yes, to some extent.

(v) No.

(vi) Yes, to some extent.

(vii) No.

(l) Petitioner has given a complete answer to No. 2(j).

INTERROGATORY 3. Admit or deny that the following inspection reports were signed by an authorized representative of Gary Development, Inc.

(1) June 19, 1980

(2) July 25, 1980

(3) September 3, 1980

(4) November 14, 1980

(5) January 8, 1981

(6) April 21, 1981

(7) August 20, 1981

(8) October 20, 1981

(9) January 8, 1982

(10) August 10, 1982

ANSWER. (1) Admit, although the mere fact of signing the report by an authorized representative of Petitioner does not necessarily indicate the signatory's, or Petitioner's agreement with the conclusions of the report itself.

(2) Admit, with the same caveat mentioned in (1) above.

(3) Deny.

(4) Admit, with the same caveat mentioned in (1) above.

(5) Admit, with the same caveat mentioned in (1) above.

(6) Admit, with the same caveat mentioned in (1) above.

(7) Admit, with the same caveat mentioned in (1) above.

(8) Admit, with the same caveat mentioned in (1) above.

(9) Admit, with the same caveat mentioned in (1) above.

(10) Admit, with the same caveat mentioned in (1) above.

C. CONSTRUCTION PLANS

INTERROGATORY NO. 4. In reference to the approved 1973 construction plans for the landfill site:

(a) Admit or deny that the external dewatering system has not been constructed around the entire site.

(b) Admit or deny that a flow meter was not provided on the discharge to the Grand Calumet River.

(c) Admit or deny that a water quality monitoring program was not established for the discharge to the Grand Calumet River.

(d) Admit or deny that a clay wall has not been constructed around the entire site.

(e) Admit or deny that a leachate collection system as illustrated in Exhibit No. 1 of the plans has not been

constructed under the eastern portion of the site that has been filled.

(f) Admit or deny that leachate collected on-site has not been taken to a wastewater treatment plant.

(g) Admit or deny that a gas venting system has not been installed on-site.

(h) If your response to any of the above requests for admission is one of denial, explain in detail the reason for your denial.

(i) Produce all documents relating to your responses to the questions and requests for admissions contained in Interrogatory 3 and all subparts hereto.

ANSWER. Objection. The only matters relevant to Respondent's case are alleged violations by Petitioner of applicable requirements since May 20, 1980, without waiver of, and as limited by this objection, which applies to all subparts of No. 4, Petitioner gives the following responses:

(a) Admit, although this became unnecessary when, with the state's knowledge and acquiescence, actual construction of the site deviated from the plans. The required dewatering system was constructed around that portion of the site that was being filled.

(b) Admit.

(c) Deny.

(d) Admit, although this became unnecessary when, with the state's knowledge and acquiescence, actual construction of the site deviated from the plans. The required clay wall was

constructed around that portion of the site that was being filled.

(e) Deny.

(f) Admit, although this became unnecessary when, with the state's knowledge and acquiescence, actual construction of the site deviated from the plans. As Respondent knows, leachate that is generated is collected and trapped on-site; is not allowed to go off-site; and is utilized, with Respondent's express authorization, in the Admixture operations on-site.

(g) Deny.

(h) With respect to No. 4(c), a water quality monitoring program was established. With respect to No. 4(e), a leachate collection system, as shown in the 1973 plans, was established under the eastern portion of the site. With respect to No. 4(g), a gas venting system has been installed on site.

(i) Petitioner agrees to make any requested document available for Respondent's inspection at a mutually agreed upon time at the Gary Development Company, Inc., offices and at the offices of Mr. James Nannini, the company's accountant. Mr. Nannini's offices are at 7703 Sussex Creek Drive, Darien, Illinois 60559. An inspection of the landfill site will confirm the presence of the items referred to in Nos. 4(e) and 4(g).

INTERROGATORY NO. 5. The 1980 proposal to amend the Construction Plan outlines how future site construction will be

conducted in a manner different from the previously mentioned 1973 construction plan. Relative to the plan:

(a) Admit or deny that Petitioner reviewed the plan and submitted the amendment application form.

(b) The construction techniques for the berm along the west side of the site was detailed in the amendment plan. Relative to the berm which has been constructed along the west side of the site:

(i) Admit or deny that the berm is keyed into the clay in the pit bottom.

(ii) Admit or deny that the berm was constructed by placing native clay soils in maximum 12 inch layers and compacting.

(iii) Admit or deny that the berm is a minimum of 25 feet thick in the horizontal plan from top to bottom.

(iv) Admit or deny that the berm was compacted at optimum moisture content to a ninety percent maximum density as determined by the Standard Proctor Test. If your answer is one of admission provide copies of results of soil tests.

(c) Admit or deny that the Petitioner was aware of groundwater or fluids flowing into the site along the west side of the pit prior to the proposal to amend the Construction Plans.

(d) If your response to any of the above requests for admissions is one of denial, explain in detail the reason for your denial and give a detailed explanation of how the berm was constructed if different from the method described in the amendment plans.

(e) What size and type of equipment was utilized to construct the berm?

(f) Give the names, addresses, and phone numbers of equipment operators who constructed the berm.

ANSWER. (a) Admit.

(b)(i)-(iv) Objection. These requests for admissions assume that the entire berm along the west side of the site was required to be constructed in accordance with the plans approved by Respondent February 16, 1982, which assumption is contrary to law and fact, and is therefore irrelevant and an improper request for admission under the Indiana Rules of Trial Procedure.

(c) Objection. See Objection to No. 4 above. Without waiver of, and as limited by this objection, Petitioner's response is: Admit.

(d) Not applicable.

(e) B. E. 40-H Hydraulic Hoe
Catterpillar D-8 Bulldozer
Rexmod 370 Compactor

(f) Ed DeVries
479 North Cline Avenue
P. O. Box 6056
Gary, Indiana
219-944-7858

Nick DeFrank
479 North Cline Avenue
P. O. Box 6056
Gary, Indiana
219-944-7858

Larry Hagen, Jr.
See Answer to
Interrogatory 2(c) above

INTERROGATORY NO. 6. Was any registered engineer on site during construction of the berm along the west wall to observe,

review or critique said construction? If the answer is no, who was responsible for assuring the berm was constructed according to the proposed plans to amend the construction permit.

ANSWER. No to Petitioner's knowledge, this is not, and has not been, a requirement of any approved plan, permit or regulation. Larry H. Hagen, Sr. was on site from time to time to oversee the construction of the referenced berm.

D. HAZARDOUS AND SPECIAL WASTE

INTERROGATORY NO. 7. List the following information for each RCRA hazardous waste disposed of at the Petitioner's landfill since November 19, 1980 and provide a copy of the manifest form which accompanied each waste.

(a) Name or type of each specific waste and EPA Hazardous Waste Number.

(b) Generator's name and address.

(c) Name and address of hauler that transported the waste.

(d) Total quantity received to date.

(e) Copies of lab analysis of material.

(f) Date the last load of waste was received.

ANSWER. Pursuant to Ind. R. Trial P. 33(c), Petitioner agrees to make available for Respondent's inspection at a mutually agreed upon time, Petitioner's business records located at the Gary Development Co., Inc. office, 479 North Cline Avenue, Gary, Indiana, and at the office of Mr. James Nannini, 7703 Sussex Creek Drive, Darien, Illinois 60559, from which the requested information can be ascertained.

INTERROGATORY NO. 8. Admit or deny that waste from Jones and Laughlin Steel's 6-stand oil recovery unit has been disposed of at the petitioner's landfill.

ANSWER. Admit.

INTERROGATORY NO. 9. If the answer to Interrogatory 8 is one of admission, describe the physical characteristics of the waste delivered to the site.

ANSWER. The waste material is a dark colored material, varying in consistency from a semi-solid to a substantially solid material.

INTERROGATORY NO. 10. List the following information for each special waste which is a hazardous waste under the landfill regulation definition (320 IAC 5), but not a RCRA hazardous waste, which have been disposed of at the Petitioner's landfill since June 1, 1980:

(a) Name or type of waste.

(b) Generator's name and address.

(c) Name and address of hauler that transported waste.

(d) Total quantity received to date.

(e) Copies of lab analysis of waste.

(f) Date the last load of waste was received.

ANSWER. Pursuant to Ind. R. Trial P. 33(c), Petitioner agrees to make available for Respondent's inspection at a mutually agreed upon time, Petitioner's business records located at the Gary Development Company, Inc. office, 479 North Cline Avenue, Gary, Indiana, and at the office of Mr. James

Nannini, 7703 Sussex Creek Drive, Darien, Illinois 60559, from which the reqested information can be ascertained.

INTERROGATORY NO. 11. Has the following ever been disposed of at the site by dumping into pits excavated into previously filled areas of the landfill?

(a) RCRA hazardous waste

(b) Special waste

ANSWER. (a) Objection. The only matters relevant to Respondent's case are alleged violations by Petitioner of applicable requirements since May 20, 1980. Without waiver of, and as limited by this objection, the answers to both (a) and (b) are: No.

INTERROGATORY NO. 12. If the answer to Interrogatory 11 is yes, list those wastes which have been handled in the described manner and indicate the maximum amount of time that passed before the pit was filled in with refuse and covered.

ANSWER. Not applicable.

INTERROGATORY NO. 13. Admit or deny that RCRA hazardous wastes or special wastes have been disposed of at the Petitioner's site after operating hours established by the answer to Interrogatory B 2(a).

ANSWER. Objection. The request is ambiguous because it covers two separate, distinct items. Without waiver of this objection, Petitioner states that many kinds of waste have been disposed of before or after "normal" business hours. Petitioner agrees to make available for Respondent's inspection at

a mutually agreed upon time produce its business records located at the Gary Development Company, Inc. office, 479 North Cline Avenue, Gary, Indiana, and at the office of Mr. James Nannini, 7703 Sussex Creek Drive, Darien, Illinois 60559, from which the requested information can be ascertained.

E. MISCELLANEOUS

INTERROGATORY NO. 14. Were the monitoring wells on-site sampled during April of 1982? If yes, produce a copy of the test results.

ANSWER. No, but samples were taken in late June and August, 1982.

INTERROGATORY NO. 15. List the educational background of Larry Hagen including the degree or certificate conferred, the school from which the degree or certificate was conferred, and the date of conferral.

ANSWER. Graduated, 1953 Thornton Township High School, Harvey, Illinois.

INTERROGATORY NO. 16. List Larry Hagen's work experience prior to working for Gary Development, Inc. relative to the operation of solid waste disposal facilities.

ANSWER. Operator,
Active Ability, Inc.
Solid Waste Facility
17730 Chicago Avenue
Lansing, Illinois
Facility completed in 1970

Co-operator,
Chicago Hts. Solid Waste Facility
Chicago Hts., Illinois
1966 - 1968

Co-operator
Nardi and Sahia
Peatone Solid Waste Facility
Peatone, Illinois
1966 - 1969

INTERROGATORY NO. 17. Does the petitioner or Larry Hagen own or operate any other landfill sites or solid waste related facilities? If yes, list the name, address, and nature of business of the sites or facilities.

ANSWER. No.

INTERROGATORY NO. 18. Does the Petitioner provide, or if not, send its employees to, a training program of any kind, formal or informal, on operating a landfill?

(a) If so, discuss in detail the nature of such programs; and produce documentation that the current employees have completed such training.

ANSWER. As a prerequisite to being hired, all equipment operators are trained and certified by the Operating Engineers Union, Local 150.

(a) The Operating Engineers Union has training schools where the operators are trained. All operators have undergone training and apprenticeship programs, and are currently journeymen operators.

Respectfully submitted,

Petitioner, Gary Development Company, Inc.

John M. Kyle III

E. Victor Indiano

Counsel for Petitioner

Barnes & Thornburg
1313 Merchants Bank Building
Indianapolis, Indiana 46204

Lawrence H. Hagen, Sr.
Executive Vice President,
Gary Development Company, Inc.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing "Petitioner's Answers to Respondents First Set of Interrogatories" has been served on the Respondent's attorney:

Mathew S. Scherschel, Deputy Attorney General
Counsel for Environmental Management Board of
the State of Indiana
Room 219, State House
Indianapolis, Indiana 46204

by hand delivery, this 6th day of December, 1982.

John M. Kyle, III

E. Victor Indiano

E. Victor Indiano

Reference TT
Recommended Consent Decree
3-1-83

STATE OF INDIANA

ENVIRONMENTAL MANAGEMENT BOARD

INDIANAPOLIS, 46206

1330 West Michigan Street
P.O. Box 1964

March 1, 1983

VIA CERTIFIED MAIL

Mr. Lawrence Hagen
479 North Cline Avenue
P.O. Box 6056
Gary, Indiana 46406

Dear Mr. Hagen:

Re: In The Matter of
Gary Development, Inc.,
vs.
The Environmental Management Board
State of Indiana
Cause No. W-53

This is to inform you that the Indiana Environmental Management Board, at its regularly scheduled meeting of February 18, 1983, approved the Recommended Consent Decree negotiated between yourself or your representatives and members of our staff. A copy of the Final Order, executed by myself as Technical Secretary on behalf of the Board, is enclosed.

You are, no doubt, familiar with the terms of the Final Order necessary to ensure future compliance.

Very truly yours,

Ralph C. Pickard
Technical Secretary

DBH
Enclosure
cc: Lake County Health Department
Mathew Scherschel, Deputy Attorney General
John M. Kyle III
Ronald G. Blankenbaker, M.D.
Mr. Richard Shandross, U.S. EPA

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.

THE ENVIRONMENTAL
MANAGEMENT BOARD OF
THE STATE OF INDIANA,
Respondent.

CAUSE NO. N-53

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. 4.9×10^{-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

By John M. Kyle III
John M. Kyle III

INDIANA ENVIRONMENTAL MANAGEMENT BOARD

Technical Recommendation

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

Date: 2/16/83

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