

ILLINOIS POLLUTION CONTROL BOARD  
December 17, 1981

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, )  
 )  
 Complainant. )  
 )  
 v. ) PCB 80-185  
 )  
 PIELET BROS. TRADING, INC., )  
 )  
 Respondents. )

CONCURRING OPINION (by D. Anderson):

I concur with the result in this case. However, I differ from the majority on two matters leading to the result: first, I would not acknowledge that it might be a defense to violation of permit conditions that the permit was not required; and, second, I would not extend the Reynolds rationale to this case.

The courts have held that: "one cannot defend oneself in an enforcement action alleging failure to receive a permit by claiming the permit application was wrongfully denied. The Act provides a means to protest the denial of a permit application" (IEPA v. Allaert Rendering, PCB 76-80, 3rd District, December 12, 1980). A similar rule should apply where the Respondent has been issued a permit and is charged with violation of the conditions. Pielet should have appealed the conditions to the Board if it found them onerous. The Board could also have reviewed the question of whether the permit was required if the issue had been raised on appeal. Otherwise, the permit application constituted an admission that the permit was required where there was no preservation of rights through appeal.

The second point concerns the decision that the permit was in fact required because the on-site exemption of §21(d) of the Act was not applicable. The Opinion recites the size of the facility and quotes Reynolds Metals v. IEPA, PCB 79-81, November 19, 1981. This rationale is objectionable for the reasons set forth in the dissenting Opinion in Reynolds.

Reynolds and the previous cases along this line required permits only of big facilities disposing of waste in quarries. There is no quarry involved here. This case extends the Reynolds rule to require permits of on-site facilities which are merely big.

I concur in the result that a permit is required of this facility. I would, however, follow the rationale of R.E. Joos Excavating v. IEPA, PCB 76-262, 3rd Dist., March 31, 1978.

**Joos held that the onsite permit exception was not applicable because the waste was generated at a site different from the disposal site. This is very similar to Pielet.**

The on-site exemption was intended to apply to waste generated by a manufacturing operation and disposed of on-site. For example, a facility manufacturing automobile seats is allowed to landfill fabric trimmings at the site without a permit. This is vastly different from Pielet's operation in which it processes waste automobiles, salvaging part and landfilling part. The exception was not intended to apply to this.

In this case automobiles which have served their original purpose are discarded by owners. They become waste prior to transportation to Pielet's facility for processing. The waste is generated by the owners of the automobiles, not by Pielet's salvage operation. It is therefore not generated at Pielet's disposal site, the on-site exemption is inapplicable and a permit is required.

The fact that Pielet pays for the automobiles is irrelevant. Waste is judged from the perspective of the generator. The fact that it is valuable to some processor is irrelevant. To hold otherwise creates a vast loophole in the waste permit system: recyclers could operate landfills adjacent to recovery facilities and be outside the permit system. Although recycling is to be encouraged, it should be encouraged within the permit system where there is Agency review of plans prior to construction and periodic inspections and monitoring.

The Board's decision in Safety-kleen v. IEPA (PCB 80-12, February 7, 1980, 37 PCB 363, 2d Dist., 1981) has been quoted in other cases as holding that recyclable materials are not waste in Illinois. This overlooks the unique fact of Safety-kleen's operation: it owned the solvents which it leased to users. It was the generator as well as the processor of the solvents, which were therefore not waste from Safety-kleen's perspective. A holding that valuable material is not waste would remove the entire solvent recycling industry from Chapters 7 and 9. This is inconsistent with the Board's carefully limited language in Safety-kleen.



Donald B. Anderson, Board Member

I, **Christan L. Moffett**, Clerk of the **Illinois Pollution Control Board**, do hereby certify that the above **Concurring Opinion** was filed on the 28<sup>th</sup> day of December, 1981,

Christan L. Moffett  
Christan L. Moffett, Clerk  
Illinois Pollution Control Board