

ILLINOIS POLLUTION CONTROL BOARD
August 18, 1977

CANNON CONSTRUCTION COMPANY,)
)
Petitioner,)
)
v.) PCB 77-57
)
ENVIRONMENTAL PROTECTION AGENCY,)
)
Respondent.)

OPINION AND ORDER OF THE BOARD (by Dr. Satchell):

A petition for variance from Sections 21(b), 21(c), and 21(e) of the Environmental Protection Act (Act) was filed with the Board on February 22, 1977. The Environmental Protection Agency (Agency) filed a recommendation of denial of the variance on March 24, 1977. Subsequently a hearing was held on April 29, 1977 at which time a stipulation and proposed settlement was submitted for Board acceptance. The Board does note that a stipulation is inappropriate in a variance proceeding. There are no procedural provisions for disposition in this manner. In this instance the Board will accept this stipulation as an Agency recommendation.

The variance request was to allow Petitioner to continue to operate its refuse disposal site located northeast of Quincy, Illinois, without first obtaining a permit from the Agency. The site is located in Section 23, Township 1 South, Range 8 West of the Fourth Principal Meridian in Adams County, Illinois. Petitioner's business has been in operation for about two years (Pet. 2). The Agency first informed petitioner of the need for a permit on November 3, 1976 (Rec. 2). According to the agreement submitted at the hearing Petitioner asks for a variance only through August 31, 1977 during which period Petitioner will be submitting an application for a permit. The contaminants disposed of at the site include brick, lumber, concrete and non-salvageable demolition waste, estimated at 500 ton/year (Pet. 1).

The stipulation provides additional facts. Petitioner's business is a sole proprietorship doing construction and demolition in west central Illinois and northeast Missouri. The majority of its construction and demolition business is done pursuant to bids. Jobs are scheduled an average of six months after letting contracts. The majority of the profitable work is done during the spring and summer months, the period for which the variance is sought. Petitioner employs three people. Petitioner's demolition activity often is a predicate to construction or urban renewal activity which creates or perpetuates jobs in the Quincy area. The Quincy unemployment rate is two or three percent higher than the statewide average in Illinois.

Petitioner did contact more than one engineering firm in January, 1977 and ultimately engaged one of the firms; however, the severe winter weather in west central Illinois made scheduling of outdoor engineering support activity virtually impossible.

The local rate for public disposal is \$15/load. This is substantially greater than the per load cost of Petitioner dumping at his own site. In addition many of Petitioner's costs relative to the landfill site continue (i.e. bulldozer maintenance, land costs, etc.) irrespective of the inactive status of the site. The stipulation provides that with a capitalization of \$30,000 and land contracts outstanding on all its property, Petitioner would be unable to meet its obligations as they come due if it is not allowed to do business in the peak season. If Petitioner is obliged to perform on contracts bid six to nine months ago on the basis of anticipated availability of the landfill, Petitioner will not be able to perform them at a profit.

Petitioner claims numerous arbitrary and unreasonable hardships including but not limited to:

1. Inability to bid jobs knowing the cost of disposal.
2. Possibility of no work through peak season and consequent possible foreclosure of land contracts.
3. Loss to community of demolition services preliminary to public works and urban renewal projects.
4. Possible unprofitable performance on jobs bid before closure of site to avoid enforcement action.
5. Paying for ownership of landfill site and attendant equipment, yet having to pay for outside disposal.
6. Possible layoffs of innocent third parties from employment with Petitioner and from employment dependent upon Petitioner's ability to perform contracts already let.
7. Being penalized for a long and severe winter which delayed engineering support work on his permit application.

The Agency takes no position as to whether each and every-one can be classified as arbitrary and unreasonable; however, the Agency agrees that the total effect would be an unreasonable hardship on Petitioner.

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A preliminary hydrogeologic evaluation of the proposed site was made by the Illinois State Geological Survey. This report was based on information gathered by the Survey for the Quincy/Adams County Landfill, not an onsite investigation. An excerpt from that report is included in the Stipulation (Stip. 6, 7). Based on this report the parties agree that the potential for water pollution is minimal. Following proper operating procedures including daily cover and the acceptance at the site of only customary demolition wastes will further minimize the possibility of groundwater or stream pollution during the term of the variance. The Agency recommends granting the variance from permit requirements through August 31, 1977 with several conditions. During the hearing there was an offer of proof made concerning the admission of Respondent's Exhibit A. The Board will affirm the hearing officer's ruling.

Two citizen witnesses objected to the site. These objections were directed toward the existence of any landfill in the area and were concerned with possible future violations or pollution. None of the objections were based on actual knowledge that the site was not being run properly or that it was an actual source of pollution. The Board appreciates the concern of these citizens but absent evidence of pollution or a threat thereof the Board finds that Petitioner has shown adequate hardship to receive a variance. Petitioner has shown good faith but was hindered by the unusually severe winter. The variance will be granted subject to the Agency's suggested conditions.

This opinion constitutes the Board's findings of fact and conclusions of law in this matter.

ORDER

Cannon Construction Company is hereby granted a variance from Rule 202(b)(1) of the Board's Solid Waste Regulations and Section 21(e) of the Environmental Protection Act through August 31, 1977 subject to the following conditions:

1. Respondent will attempt to submit to the Agency a proper and complete application for an operating permit prior to June 1, 1977 and in any case will file an operating permit application with the Environmental Protection Agency on or before July 1, 1977. In the absence of such a filing or the issuance of a permit in the interim, this Board may revoke the Variance and order closure within sixty days;
2. Provided further that Petitioner comply with all requirements of the Environmental Protection Act and Chapter 7 of the Board's Regulations as regards the general operation of landfills.

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3. Respondent will not accept wastes of any kind at the site from any person or company other than Cannon Construction Company.
4. In the event the permit applied for on or before July 1, 1977 is denied by the Environmental Protection Agency, Petitioner shall properly close the subject site within sixty days of receipt of the denial, provided, however, that if a permit denial appeal is taken to this Board and is unsuccessful, closure is to be thirty days after receipt of the Board's Order by Registered Mail.

The request for variance from Sections 21(b) and 21(c) of the Act is not necessary and is dismissed.

IT IS SO ORDERED.

Mr. Jacob D. Dumelle dissented.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 18th day of August, 1977 by a vote of 4-1.


Christan L. Moffett, Clerk
Illinois Pollution Control Board

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