



1. Krenz originally applied for an Agency operating permit on October 30, 1974.

2. That application was denied by the Agency on January 28, 1975, for lack of sufficient proof that the site would not cause water pollution, particularly through the infiltration of leachate into ground water.

3. In PCB 74-387 and PCB 74-457, the Board approved Krenz's plan to completely fill and close the site by Fall of 1976. 16 PCB at 440. While the Board did not find that this plan would "guarantee" the avoidance of ground water pollution, it did find the plan to be "the best solution to an intractable situation." 16 PCB at 440. The Board's approval was tied to strict conditions concerning methods of operation and closure, and the Board stated that "[c]onscientiously carrying out the Order in this case will be an important consideration if Petitioner applies for another variance in late 1975." Id.

4. Krenz again applied for an operating permit on October 28, 1975. That application, and amendments thereto, were based in part on the monitoring of additional test wells ordered by the Board in PCB 74-387 and PCB 74-457.

5. Krenz's new permit application was denied by the Agency on December 30, 1975. The denial was again based on Agency uncertainty as to the site's effects on ground waters, in conjunction with an Agency policy of requiring strict examination of potential leachate problems from solid waste management sites located on old sand or gravel pits, (R. 104).

6. Since the entry of the Board's Order in PCB 74-387 and PCB 74-457, Krenz has complied with the conditions imposed there, and has improved its methods of operation at the site. However, because the site was closed during the pendency of the prior case, because some areas were discovered to contain less fill than previously estimated, and because the volume of fill coming into the site has diminished, Krenz has been unable to keep up to the schedule set out in the prior Order.

We are still faced with the "intractable situation" noted in our prior Opinion. The Agency states it is still unable to determine that the site will not cause pollution of ground water, and has again refused to issue a permit for operation at the site. However, the Agency is not sure, on the other hand, that the site will cause such pollution; its Recommendation states, (at p. 11), "[t]he Agency has not determined that a permit could never be issued for [the] site." (Emphasis in original.) The difficulty apparently is that the Agency feels that monitoring at 5 test wells in and near the site (two of which were ordered by the Board in the previous case) is inconclusive on the subject of leachate infiltration. The Agency feels that two additional wells must be dug before any final determination can be made, (R.98; Rec., p. 12).

On these facts we are constrained to grant the requested Variance. The hardship found in our prior Opinion is still present for Petitioner, other businesses using the site, and the public in the area. Against that hardship we must balance the following environmental effects:

1. The effect on ground water is potentially severe, but significant testing to date shows inconclusive results; there may in fact be no adverse impact.

2. Over the long run, the Agency's principal witness agreed that, "as a practical matter," Krenz has no reasonable, feasible alternative to its present program for final closure of the site, (R. 105). That witness also agreed that by following its plan, Krenz will lessen the potential for leachate by reducing the amount of surface water flowing into or through the site, (R. 101).

We shall again grant the Variance for a one-year period, in hopes that the two new additional test wells suggested by the Agency and agreed to by Krenz will provide sufficient information on which to make a final determination, (R. 110). We shall require those wells as conditions to the Variance grant, as well as continuing in effect most of the conditions contained in our earlier Order, with minor changes in the schedule.

As an additional condition to the Variance, in response to the written submission of objector Dwight J. Dick, we shall require that Krenz take whatever actions as are necessary to prevent blowing litter in the area of its site. Mr. Dick's comments indicate that the Krenz site may be a considerable source of litter pollution, in violation of Rule 306 of Chapter 7: Solid Waste, which requires daily collection and cover or storage of litter. In a letter received at the Board on March 17, 1976 Petitioner agrees that litter is a problem, and itself suggested that a Variance grant be conditioned on alleviation of the problem.

We note that this is an unusual situation. While the Board does not favor the grant of Variances from permit requirements, and would prefer that where Variances are necessary they concern substantive regulations, this situation does not allow for that type of solution. Both parties are acting in good faith. The Agency is unable to issue the permit due to lack of certainty, and Krenz is taking all reasonable steps to operate in compliance with the Act and our Regulations. We allow this Variance from the permit requirement only because no other remedy is feasible.

This Opinion constitutes the findings of fact and conclusions of law of the Board in this matter.

ORDER

1. Petitioner Krenz Trucking, Inc., is granted a Variance from Section 21(e) of the Environmental Protection Act and Rule 202(b)(1) of Chapter 7: Solid Waste, of the Pollution Control Board Rules and Regulations, from December 6, 1975 until December 5, 1976, to operate its solid waste management site in McHenry County, Illinois without an Operating Permit from the Environmental Protection Agency, subject to the following conditions:

a. Petitioner shall comply with all conditions (1 through 8) in PCB 74-387 and PCB 74-457 (Consolidated), except as modified below.

b. Petitioner shall install two further test wells at locations approximately 300 feet north and south of the site, respectively, with specifications to be approved by the Environmental Protection Agency, to monitor and test underground water parameters previously agreed to by Petitioner and the Environmental Protection Agency.

c. As soon as practicable in Spring of 1976 Petitioner shall commence final cover operations in all completed sections of areas #1 and #2; final cover to be completed by May 31, 1976, and seeding to be completed by July 1, 1976.

d. Petitioner shall, wherever possible, apply all intermediate and final cover to completed sections of area #3 by May 31, 1976, and shall continue to apply final cover as portions of that area receive fill and are brought up to final grade.

e. Petitioner shall take whatever steps are necessary to prevent blowing or other litter from leaving the site; as a minimum, portable litter fencing shall be used as needed in the immediate area of the working face at the site.

2. Petitioner shall, within thirty (30) days of the date of this Order, submit to the Environmental Protection Agency at the address shown, the following certification:

TO: Environmental Protection Agency  
Manager, Variance Section  
2200 Churchill Road  
Springfield, Illinois 62706

I, (We), \_\_\_\_\_ having read  
the Order of the Illinois Pollution Control Board  
in case No. PCB 75-429, understand and accept said  
Order, realizing that such acceptance renders all  
terms and conditions thereto binding and enforceable.

\_\_\_\_\_  
SIGNED

\_\_\_\_\_  
TITLE

\_\_\_\_\_  
DATE

Mr. Jacob Dumelle concurred.  
Mr. James Young concurred.

I, Christan L. Moffett, Clerk of the Illinois Pollution  
Control Board, hereby certify the above Opinion and Order were  
adopted on the 25<sup>th</sup> day of March, 1976 by a vote of 4-0.

  
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Christan L. Moffett, Clerk  
Illinois Pollution Control Board