

ILLINOIS POLLUTION CONTROL BOARD
February 2, 1978

JACK THOMPSON d/b/a)
WARREN DISPOSAL SERVICE)
)
Petitioner,)
)
vs.) PCB 76-249
)
ENVIRONMENTAL PROTECTION)
AGENCY,)
)
Respondent.)

MR. WILLIAM KELLY OF NACK, RICHARDSON AND NACK, APPEARED ON BEHALF OF THE PETITIONER.
MS. SUSAN SHUMWAY, ASSISTANT ATTORNEY GENERAL, AND MS. JUDITH GOODIE APPEARED ON BEHALF OF THE RESPONDENT.

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

This petition for variance was originally filed October 4, 1976. On February 3, 1977 the Board denied the petition. The case has been remanded from the Second District Appellate Court so that a hearing could be held. A hearing was held in this matter on October 31, 1977 concerning the second amended petition for variance which was filed on October 24, 1977.

The petition requests variance from Rule 313 and 316 of the Chapter 7: Solid Waste Regulations (Chapter 7) until October 31, 1978. Variance is sought for three acres of a nineteen acre landfill site located in the north half of the northeast quarter of the southwest quarter of Section 19, Township 29 North Range 5 East, Jo Daviess County, Illinois. This site has been operated by Petitioner since 1966. Mr. Thompson provides waste disposal for the surrounding communities of Warren, Apple River, Scales Mound, Nora and Waddams Grove and Apple Canyon State Park.

The original variance petition requested an eight month period to obtain a new site and an additional 4 months to develop the new site and close the old landfill. The dates requested were March 1, 1977 and June 30, 1977. The second amended petition has the same compliance plan only the dates have been delayed to June 1, 1978 and October 31, 1978. The Environmental Protection Agency (Agency) recommends denial of the request. The Agency also notes that what Petitioner really requires is variance from the permit requirements of Rule 202(b) of Chapter 7 and Section 21(e) of the Environmental Protection Act.

Petitioner has applied for a permit; however according to Petitioner's consulting engineer the nineteen acre site was "very marginal" for landfill purposes (R. 102). At best a one to three acre site in northwest section of the landfill would be used (R. 60, 105). Much necessary information was not presented with the permit application (R. 111-112). No permeability tests were done (R. 112). No land use or population density information was provided (R. 109). No information concerning ion exchange properties of subsurface materials was submitted (R. 113). No analysis of the subsurface grain size distribution was submitted (R. 113). No information concerning soil classification or ground water was submitted (R. 113-1150).

The Agency denied Petitioner's permit application on the basis that there is a lack of impermeable material covering the bedrock at the site (Resp. Ex. G.). Joseph Petrilli, an Agency engineer, stated that if limestone was fissured or cracked anywhere in the surface that there was the possibility of leachate from the landfill working its way through the limestone and polluting the ground water supply (R. 193). Leachate could also probably move along to an area where limestone is an outcropping along a river, or a creek, or stream and may result in surface water pollution (R. 193). Also Mr. Petrilli noted that obtaining enough cover material at the site might be a problem (R. 194).

Petitioner's claim of hardship is that he will go out of business and several communities will be without waste disposal service if the variance is denied. Petitioner inquired at several of the area landfills and was told his use of the site would not be allowed, except at one site, where Petitioner finds it is not economically feasible to use the site (R. 20-27). However, Petitioner did not inquire whether the neighboring services would cover his area if he closed his business. Petitioner has obtained several of his jobs through bids which would indicate that someone would service the communities (R. 8). However, there is some indication that in recent years Petitioner may have been the only bidder in some cases (R. 35, 36). Petitioner does not indicate financial hardship for himself; he does have another source of income in a construction business (R. 82). While Petitioner has been deemphasizing his construction business to operate the landfill, the opportunity to expand remains (R. 82). The Board has noted in previous cases that denial of a variance is not a shut down order; it is a refusal by the Board to provide the Petitioner with the defense of a variance to a subsequent enforcement action, Caterpillar Tractor Company v. E.P.A., PCB 75-499, 21 PCB 105, 103 (1976).

Petitioner has indicated he has had difficulties in obtaining a new site; however Petitioner has shown no progress at all over the year. Since the dates originally requested are long past this gives the Board no indication that Petitioner will comply with the presently suggested compliance plan.

With the information presented to the Board there is no alternative but to deny the requested variance. Petitioner has not proven any hardship will exist by denial of the variance and the record is bereft of evidence that will show the environment will not be unduly harmed by the grant of this variance. If anything, there is an indication of great potential for pollution. The petition for variance is denied.

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


ORDER

The Pollution Control Board hereby denies Jack Thompson variance from Rules 202(b), 313, and 316 of the Chapter 7: Solid Waste Regulations and Section 21(e) of the Environmental Protection Act.

IT IS SO ORDERED.

Mr. Werner concurred.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion was adopted on the 2ND day of February, 1978 by a vote of 5-0.


Christan L. Moffett, Clerk
Illinois Pollution Control Board