

ILLINOIS POLLUTION CONTROL BOARD

September 20, 1973

MELVIN WATSON and M & W DISPOSAL INC.	)	
	)	
Petitioners,	)	
	)	
vs.	)	PCB 73-267
	)	
ENVIRONMENTAL PROTECTION AGENCY,	)	
	)	
Respondent.	)	

Zenon Myszekowski, Attorney for Petitioners  
Michael A. Benedetto, Jr., Assistant Attorney General for the EPA

OPINION AND ORDER OF THE BOARD (by Mr. Henss)

M & W Disposal Company operates a refuse disposal site in Will County, Illinois. On March 22, 1973 we found that the Company had violated certain provisions of the Environmental Protection Act and the Regulations governing the operations of a landfill, and ordered M & W to pay a monetary penalty of \$2500. The Order entered at that time also provided:

- "2. Respondent shall within 90 days from the date herein, comply with all Rules and statutory provisions including the obtaining of all necessary permits with respect to the operation of a refuse disposal site and facility.
3. Respondent shall cease and desist the aforesaid violations and shall close that facility in accordance with the Act and the Rules if said permit application is denied."

M & W has paid the monetary penalty but now requests variance from that part of our Order which requires the Company to obtain a permit for the operation of the landfill by June 20, 1973

The EPA recommends denial of the variance. On August 8, 1973 the Agency stated:

"At the present time, Petitioner's site is not zoned so as to allow the property to be used as a refuse disposal site. Petitioner, therefore, has sought suitable zoning classification in the Circuit Court of Will County. Such

an action is necessary because the Agency, in accordance with the Rules and Regulations for Refuse Disposal Sites and Facilities, will not issue permits until permit applicants submit proof that a zoning of the property allows the operation of refuse disposal facilities."

Subsequently the Agency acknowledged that the Solid Waste Rules and Regulations currently applicable (effective July 27, 1973) contain no provision or rule requiring compliance with local zoning ordinances before permits can be issued by the Agency. The Agency said on September 19, 1973 that "Petitioner can minimize his economic loss by promptly filing a completed permit application with this Agency".

Zoning for the operation of a landfill at this location has been refused by the Village of Rockdale on at least three occasions--in 1969, 1971 and 1973. Suit was commenced in Circuit Court of Will County in January 1972 asking for a court determination on the zoning question. Petitioner's attorney informed us by letter on July 9, 1973 that the Circuit Court "has entered" a decree finding that the land in question "is suitable only for use as a sanitary landfill and that the Village of Rockdale is enjoined from prohibiting the land use in any manner not in accordance with the decree of the court." The attorney said "upon preparation and signing of this decree I will forward a copy to you." We have not received the decree although it has been two and one-half months since the attorney notified us that it had been "entered" and indicated that it would be prepared and signed.

This brief recital indicates that there may be serious questions raised regarding the location of this landfill. We do not know if this site is a good one for a landfill. We do not know what environmental problems may be involved since no evidence on this point has been presented. The Agency says "the potential for pollution of Petitioner's site can best be evaluated by means of a permit application." We agree and will not bypass the permit procedure. It is not in the best interests of the citizens of Illinois to allow a landfill to operate indefinitely without a permit. We have granted variance for those short periods of time needed in the processing of permit applications.

It has now been six months since we entered our Order in EPA vs. M & W Disposal Company Inc., PCB 72-467. We have not been advised that the zoning problem has been solved or that a permit application has been filed nor have we been shown any court decree which would delay enforcement of our cease and desist Order. There is no evidence that the Petitioner can come into compliance with the Regulation within the foreseeable future and we see no alternative but to deny the variance.

ORDER

It is ordered that the petition of Melvin Watson and M & W Disposal Inc. for a variance from our Order of March 22, 1973 in PCB 72-467 is hereby denied.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order was adopted this 20<sup>th</sup> day of September, 1973 by a vote of 5 to 0.

Christan L. Moffett

