

ILLINOIS POLLUTION CONTROL BOARD  
January 30, 1973

DEAN PENN and )  
WALTER DEEMIE )  
 ) #72-432  
 )  
v. )  
 )  
ENVIRONMENTAL PROTECTION AGENCY )

DEAN PENN and WALTER DEEMIE, PRO SE  
LARRY EATON, ASST. ATTORNEY GENERAL, ON BEHALF OF ENVIRONMENTAL  
PROTECTION AGENCY

OPINION AND ORDER OF THE BOARD (BY SAMUEL T. LAWTON, JR.):

On August 15, 1972, in case entitled Environment Protection Agency  
v. Dean M. Penn and Walter Deemie, #72-189, we entered the following  
order:

- "1. Respondents shall cease and desist from causing or allowing open dumping of garbage and refuse in their dump site located near Peoria, Illinois.
2. Respondents shall apply for an Agency permit to conduct fill operations no later than August 31, 1972.
3. In the event that as a result of failure or inaction on the part of Respondents no permit is obtained by December 31, 1972, the dump site will be closed permanently with final cover.
4. Respondents shall within 35 days after receipt of this Order pay a penalty of \$750.00 by check payable to Fiscal Services Division, Environmental Protection Agency, 2200 Churchill Drive, Springfield, Illinois 62706. This shall be the responsibility of Respondents jointly and severally."

On November 3, 1972, we received a petition for variance. It is difficult to tell from the petition precisely what relief the petitioners seek. The record indicates that while paragraph 4 of the Order with respect to the fine has been complied with, the petitioners have not ceased dumping at the site and have not obtained a permit from the Agency to continue the operation of the facility as a dump site. The substance of petitioners' request appears to be that they are seeking the right to continue the operation of the dump site facility without a permit from the Agency. Discussion between

petitioners and Agency personnel has taken place since the August 15, 1972 Order. The Agency has proposed that the dump site be improved with a clay filler to prevent leachate into the underlying aquifer. This proposal did not meet with petitioner's approval and evidently, the discussions with respect to the permit ceased.

Testimony at the hearing brought out that the landfill site is an abandoned sand pit in which approximately 85 feet of fill has already been deposited, leaving approximately 15 or 20 feet remaining. Both petitioners and Agency personnel questioned the suitability of placing the clay floor on top of the already deposited refuse. The suggestion was made that final cover and compacting might achieve the same purpose. However, evidence indicates that petitioner's desire to continue the dumping of refuse for as long as two years, during which time no final cover would be applied and during which time the percolation and leachate conditions would continue. Accordingly, we do not feel that an adequate demonstration of hardship has been made before us on which a variance could be granted. In any event, we are certainly not disposed to authorizing petitioners to operate their facility without a permit from the Agency if, indeed, this is what is being sought by the variance.

The variance petition filed by Dean Penn and Walter Deemie is denied.

IT IS SO ORDERED.

I, Christa \_\_\_\_\_, Clerk of the Illinois Pollution Control Board, certify that the above opinion and Order was adopted on the 30<sup>th</sup> day of January, 1973, by a vote of 3 to 0.

Christa J. Moffett