

ILLINOIS POLLUTION CONTROL BOARD  
November 6, 1975

PEOPLE OF THE STATE OF ILLINOIS, )  
 )  
 Complainants, )  
 )  
 v. ) PCB 75-368  
 )  
 LINCOLN STONE QUARRY, INC., et al, )  
 )  
 Respondents. )

ORDER OF THE BOARD (by Mr. Goodman):

This matter comes before the Pollution Control Board, (Board), upon the October 20, 1975, Motion to Dismiss of Respondent First National Bank of Joliet as Trustee under Trust No. 724 (Joliet).

Joliet contends that as it is the lessor of the property on which a solid waste management site is operating, allegedly without a permit, it is not a proper party. It bases this argument on contracts and the trust agreement which are not attached to the motion. Nor does Respondent attach any affidavit to support its motion. In addition, the motion is untimely. Rule 308(a) of the Board's Procedural Rules provides that motions to dismiss are to be filed within fifteen days after receipt of the Complaint. Respondent's motion was filed some thirty days after receipt.

Respondent states that, according to its lease agreements, it has no power to control the actions of the lessee. Rule 202(b)(1) of the Solid Waste Regulations states, in part, ". . . no person shall cause or allow the use or operation of any existing solid waste management site without an operating permit. . . ." (emphasis added.) The Board stated in EPA v. James McHugh Construction Co., et al, PCB 71-291:

"The term "allow" imposes affirmative duties that may in some cases go beyond those of the common law to exercise care to prevent others from causing pollution... [A] landfill owner must exercise some control over those operating the facility under lease ... [W]e do not believe the policy of the statute can be evaded by contract...."

In view of the foregoing, without copies of the leases and/or trust agreement, the Board must deny Joliet's Motion to Dismiss.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Order was adopted on the 6<sup>th</sup> day of November 1975 by a vote of 4-0.

  
\_\_\_\_\_  
Christan L. Moffett, Clerk  
Illinois Pollution Control Board