

ILLINOIS POLLUTION CONTROL BOARD
October 17, 1972

ENVIRONMENTAL PROTECTION AGENCY)
)
)
 v.) #72-288
)
 ACME SOLVENTS RECLAIMING, INC.,)
 a corporation and VITO PUMILIA)

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

On July 7, 1972, complaint was filed by the Environmental Protection Agency against Acme Solvents Reclaiming, Inc., a corporation and Vito Pumilia, alleging operation of a refuse disposal and landfill site in Winnebago County, which operation allegedly violated certain provisions of the Environmental Protection Act and the Rules for Refuse Disposal Sites and Facilities. The case was referred to a hearing officer on July 28, 1972.

Hearing was originally set for September 5, 1972 and continued to September 25, 1972. After an unrecorded colloquy between the Assistant Attorney General, counsel for respondents, and the hearing officer with respect to the violations alleged and the possibility of compliance, hearing was begun and testimony taken relative to certain aspects of the respondents' operation. On the basis of what appears to be an agreement between the Assistant Attorney General and counsel for respondents, premised on the possibility of ultimate compliance, the hearing officer continued the case to April 2, 1973.

The foregoing procedure is wholly contrary to approved practice before the Board and must be vacated and set aside. If respondents concede the violation, this should be embodied in a stipulation and submitted to the Board for approval, at which time the subject of penalties may be considered on the basis of the agreed facts. If a variance is sought by Respondent in order to bring its operation into compliance within a reasonable period of time, petition for such variance should be filed pursuant to the Rules of the Board, which proceeding could be consolidated with the enforcement case, record made and the entire matter disposed of in an orderly fashion. If the parties do not elect to pursue either of the foregoing procedures, the case should go to trial, transcript and record prepared, which when submitted to the Board, will enable an appropriate decision to be rendered. A six-month continuance allegedly enabling the Respondent to bring its operation into compliance in effect divests the Board

of its jurisdiction already established and is completely antithetical to recognized practice and procedures that have maintained before the Board during the two years of its operation. Cf. Environmental Protection Agency v. Ralston Purina Co., #71-88, Preliminary Order dated November 23, 1971.

This opinion constitutes the findings of fact and conclusions of law of the Board.

IT IS THE ORDER of the Pollution Control Board, as follows:

The September 25, 1972 Order of the Hearing Officer, continuing the hearing to April 2, 1973, is vacated and set aside. The Hearing Officer shall, upon receipt of this Order, set a new date for hearing that shall not be in excess of thirty days from the date of this Order, prior to which date the Respondent may file a petition for variance, which if not dismissed by the Board, shall be consolidated with the pending enforcement action, or, alternatively, the parties may submit a stipulation for settlement of the cause for disposition by the Board. The Board shall enter such further Orders upon receipt of the foregoing documents as shall be appropriate. If neither a variance petition nor stipulation are received within the 30-day period above provided, the Hearing Officer shall proceed with hearing on the complaint on the new hearing date set pursuant to this Order.

I, Christian Moffett, Clerk of the Illinois Pollution Control Board, certify that the above Order was adopted on the 17th day of October, 1972, by a vote of 5 to 0.

Christian I. Moffett
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