

ILLINOIS POLLUTION CONTROL BOARD
October 14, 1971

ENVIRONMENTAL PROTECTION AGENCY)
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 v.) # 71-172
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)
 ARTHUR GERDES)

Dissenting Opinion (by Mr. Currie and Mr. Kissel):

I agree with the Board's opinion in all respects but one. The majority ruled against requiring a permit for reopening the landfill on the ground that "proper operation of the landfill can be ensured by ordering that any further operation of the landfill be in strict accordance with the rules." But it is not for us to decide in a particular case whether or not the purpose of the regulation requiring permits can be served in another way; if permits are required, we should require them. The regulation is unclear, for it simply says that prior approval shall be obtained for "any new refuse disposal site or facility," Land Rules, Rule 1.03. The question is one of interpretation, not of original policy; the issue is whether a site closed down by municipal order is a "new" one within this rule requiring permits.

I believe it is. The proper analogy, I think, is not to a manufacturing process that has been shut down for maintenance but to one that has been dismantled and is to be rebuilt. Because this operation has terminated, and because it does not involve the proposed resumption of use of old equipment that cannot be easily brought into compliance, there is no chance of interference with an existing operation. There is no better time than now for reevaluation of whether or not the site is suitable for a landfill at all. I would hold that a landfill that has been shut down is a "new" site for permit purposes if permission is sought to reopen it. In short the fact that a piece of property has once before been used for this purpose does not make a new operation an old one.

I, Regina E. Ryan, Clerk of the Pollution Control Board, certify that Mr. Currie and Mr. Kissel submitted the above dissenting Opinion this 14 day of October, 1971.

