

ILLINOIS POLLUTION CONTROL BOARD
November 19, 1981

REYNOLDS METALS COMPANY,)
)
) Petitioner,)
)
) v.) PCB 79-81
)
) ILLINOIS ENVIRONMENTAL PROTECTION)
) AGENCY,)
)
) Respondent.)

ORDER OF THE BOARD (by J.D. Dumelle):

On August 21, 1981 the Board adopted an Opinion and Order dismissing Reynolds Metals Company's petition for variance from Rules 303, 305(a) and 305(b) of Chapter 7: Solid Waste. On September 25, 1981 Reynolds filed a petition for rehearing to which the Illinois Environmental Protection Agency (Agency) responded on October 15, 1981. That motion is hereby denied.

However, the Board will reconsider that Opinion and Order and delete the first two paragraphs of page 4 of the Opinion. The record is insufficient with respect to Reynolds' rights and obligations under its lease agreement to clearly establish the lack of an ongoing, extended responsibility for the subject site. Secondly, these paragraphs were unnecessary to the decision.

The Board further offers the following observations in affirmance of its August 20, 1981 Order.

First, in addition to the cases cited which limited the Section 21(d) exemption which Reynolds argues applies to its site, in People v. Commonwealth Edison, PCB 75-368, 24 PCB 200 (November 10, 1976) the Board has previously held that a quarry landfill "is a proper subject for a permit evaluation by the Agency charged with the duty to prevent the pollution and misuse of land." The site was, as here, found not to be one where only minor amounts of refuse were being disposed of without environmental harm.

Second, Chapter 7 operating conditions arguably do not apply to the site in the absence of a permit requirement. If that is the case, the State would be left with no mechanism for preventive maintenance of such sites other than enforcement actions alleging threatened pollution. Such a course of action runs counter to the overall thrust of the Act which is to attempt

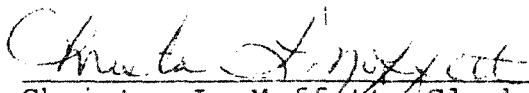
to insure through the permitting system that landfills are properly designed, constructed, maintained and operated so as to avoid potential pollution problems.

Third, the Board reiterates that a permit is needed for a facility such as Reynolds where, without conditions for at least final cover, good maintenance, and post closure oversight, the potential for environmental harm is great. Because of unknown past practices, the possibility that the site contains hazardous wastes, the high permeability of the site which is above the area aquifer, and the great amounts of material that have been disposed of there without cover, a permit is necessary. Though the materials presently being deposited at the site are not particularly worrisome, the fact remains that Reynolds should have had a permit. If it had, the Board, as well as Reynolds and the Agency, would now be in a much better position to assess the potential dangers of the site and would be better able to determine what degree of care should be taken to prevent those dangers. By requiring a permit now, these problems should at least be kept from becoming any worse.

IT IS SO ORDERED.

Board Member D. Anderson dissented.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 19th day of November, 1981 by a vote of 4-1.



Christan L. Moffett, Clerk
Illinois Pollution Control Board