

the parties the sole issue to be resolved by the Board is whether in this variance proceeding, the Board can and/or should require that all refuse collected in Woodstock, pursuant to the current waste disposal contract between the City and an independent waste disposal service, be disposed of at a site which holds a valid operating permit from the Agency. We will briefly state the history of this proceeding prior to deciding that issue.

The Stipulation of Facts shows that Petitioner received a permit from the Agency on October 27, 1972 to operate its 46 acre solid waste management site. This permit was conditioned upon the installation of a leachate collection and monitoring system designed to protect the waters of Kishwaukee Creek.

Leachate discharges into Kishwaukee Creek originate in areas of the landfill which have been under cover for a considerable period of time. Samples taken and analyzed by the Agency indicate that the water quality standards applicable to Kishwaukee Creek are not now being violated as a result of leachate discharges from this landfill. The Agency anticipated that leachate might cause a water quality problem at some time in the future.

After receipt of the permit, Petitioner contracted for a study which would evaluate the capacity of the Woodstock sanitary landfill. This study concluded that the estimated life of the landfill did not exceed five years. The estimated cost of the leachate control system for the portion of the landfill already filled at the time of the evaluation report was \$60,000. This cost is now estimated to be in the neighborhood of \$100,000.

The leachate control system was not installed. Instead, upon recommendation of its City Manager, the City of Woodstock solicited bids from collectors and scavengers for the collection and disposal of residential solid waste. On December 17, 1974 Petitioner entered into a franchise with the McHenry-Woodstock Disposal Company for the disposal of residential waste. On that same date the City of Woodstock voted to close its solid waste management facility effective January 1, 1975.

Operation of the Woodstock landfill ceased on January 1, 1975. No dumping has occurred at the landfill since that date. Studies by the Illinois State Geological Survey show that a ground water mound has formed beneath the landfill site. This mound acts to cut off the flow of other ground water through the site and into Kishwaukee Creek. The parties agree that final cover and contouring of this site will substantially reduce the present levels of infiltration creating the leachate discharges and will act to improve the water quality of Kishwaukee Creek.

The Agency recommends the grant of variance excusing Woodstock from installation of the leachate control system. The Agency, however, recommends that certain conditions be imposed on this variance. The only condition opposed by Petitioner is the requirement:

"that all waste collected from residences within the City of Woodstock, pursuant to contract or contracts entered into by the City of Woodstock under a bid advertised and received by the Woodstock City Council on November 19, 1974, shall be disposed of only at a site or sites which have received an Environmental Protection Agency refuse disposal permit from the Division of Land Pollution Control or sites which had been granted a variance from said permit requirement by the Illinois Pollution Control Board."

Petitioner argues that this Board has no authority to impose the condition suggested by the Agency; that the condition is not contemplated by the Regulations and bears no reasonable relation to the requested variance. Woodstock further contends that responsibility for enforcement of the law regarding permits rests with the Agency and objects most strongly to the Agency's attempt to shift that enforcement responsibility to the City. Petitioner claims that, under Owens v. Green (400 Ill.380), such a course would constitute an unwarranted delegation of legislative authority.

The Agency argues that the Board has authority to impose the condition under Section 36(a) of the Environmental Protection Act which provides:

"In granting a variance the Board may impose such conditions as the policies of this Act may require."

The Agency further states that it is a statutory policy to prevent the pollution or misuse of land and to prevent any refuse collection or refuse disposal without an EPA permit.

We are not told whether the landfill which now receives the residential waste does in fact have a permit issued by the Illinois Environmental Protection Agency. We are not told whether the refuse collector has a permit or if that permit provides for the disposal of refuse at Agency permitted disposal sites. It seems to us that this particular variance proceeding is not a very good vehicle for determining the legality of the current disposal operations in Woodstock.

The substance of the variance request is that Woodstock be authorized to close its landfill without installation of a leachate control system which had been included as a condition of its operating permit. The parties are in agreement that this can be done without damage to the environment. We have no difficulty at all in allowing that variance.

The Agency's attempt to impose an additional enforcement burden on the City is not properly a part of this proceeding. If the Woodstock residential waste is taken to a landfill, then that landfill must be permitted by the Environmental Protection Agency whether such language is included in the franchise or not and regardless of the intent of the City. If a permit has not been granted then the EPA can quite easily file an enforcement action before this Board. Any duties which the Agency has with regard to such investigation and enforcement proceeding cannot be delegated away.

Section 4(e) of the Act provides that:

"The Agency shall have the duty to investigate violations of this Act or of Regulations adopted thereunder, or of permits or terms or conditions thereof, to prepare and present enforcement cases before the Board and to take such summary enforcement action as is provided for by Section 34 of this Act."

It is clear that all landfill sites in Illinois must submit to the permit procedure. The current dispute is no more than an argument over which party shall move forward to enforce the law. The law authorizes enforcement actions to be filed by a municipality but we will not require the municipality to do so, at least not within the context of this current variance proceeding. We cannot infer that the City of Woodstock has deliberately entered into a franchise providing for the disposal of waste at a non-permitted site. Such a provision would not be effective. The law is to be enforced, and when the issue is properly presented to us we absolutely require that a permit be obtained for operation of a landfill.

In this case, the franchise agreement does contain the following language:

"The contractor agrees to comply at all times with the proper laws and ordinances of the City of Woodstock, the County of McHenry and the Rules and Regulations of the State of Illinois at any time applicable to the operation of the contractor under this franchise."

We conclude that the City of Woodstock has acted reasonably in complying with the requirements of the law.

This Opinion constitutes the findings of fact and conclusions of law of the Illinois Pollution Control Board.

ORDER

It is the Order of the Pollution Control Board that:

1. Variance is granted during the closing of the Woodstock landfill site from the conditions of Permit #1972-68, issued by the Environmental Protection Agency to the City of Woodstock, pertaining to installation and operation of a leachate discharge and monitoring system at the Woodstock landfill, and said conditions are hereby declared inoperative.

2. City of Woodstock shall cause its landfill site to be properly closed in conformance with the Illinois Solid Waste Regulations within 60 days of the date of this Order.

3. City of Woodstock shall not reopen its sanitary landfill site for disposal of refuse without having first secured all required permits from the Environmental Protection Agency.

4. The City of Woodstock shall take quarterly samples of the Kishwaukee Creek at three locations to be determined by the Agency. The samples taken at these locations shall be analyzed for total dissolved solids, chlorides and total iron. Reports of the analyses for the above samples shall be submitted to the Agency on or before the 15th day of January, April, July and October for a period of three years from the date of this Order. The first report shall be due October 15, 1975.

I, Christian L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order was adopted the 10th day of July, 1975 by a vote of 5-0.


Christian L. Moffett, Clerk
Illinois Pollution Control Board