

ILLINOIS POLLUTION CONTROL BOARD
October 14, 1976

COMMITTEE TO SAVE OUR ENVIRONMENT, et al.,)
)
Complainants,)
)
v.)
)
HARRY A. CARLSON and DONALD F. KREGER, d/b/a)
SOUTH SUBURBAN LAND DEVELOPMENT CO., and)
the ENVIRONMENTAL PROTECTION AGENCY,)
)
Respondents;) PCB 75-443
) PCB 76-8
PEOPLE OF THE STATE OF ILLINOIS,) (CONSOLIDATED)
)
Intervenors,)
)
ENVIRONMENTAL PROTECTION AGENCY,)
)
Complainant,)
)
v.)
)
HARRY A. CARLSON and DONALD F. KREGER, d/b/a)
SOUTH SUBURBAN LAND DEVELOPMENT CO.,)
)
Respondents.)

INTERIM OPINION AND ORDER OF THE BOARD (by Mr. Zeitlin):

This matter is presently before the Board on a Motion for Dismissal, filed with the Board on September 20, 1976, by Respondents Harry A. Carlson and Donald F. Kreger, d/b/a South Suburban Land Development Co. [hereinafter, "Southern"]. A response in opposition to that Motion was received from the original Complainants in PCB 75-443 [hereinafter, collectively, "Committee"]. No response to Southern's Motion has been received from Intervenors People of The State of Illinois [hereinafter, "People"], or the Environmental Protection Agency [Agency], Respondents in PCB 75-443 and Complainant in PCB 76-8.

This matter was originally commenced by a Complaint filed November 12, 1975, by Complainant Committee, et al., alleging in essence that:

1. A Permit issued by the Agency on May 29, 1975 to Southern, for the development of a solid waste management site in Orland Township, Cook County, constituted a violation of the Act and our Regulations, in that the Agency gave no consideration to land use and zoning classifications, or to other similar issues, as required by the Illinois Supreme Court's decision in Carlson v. Village of Worth, decided September 26, 1975. (Subsequent to the initiation of PCB 75-443, the Supreme Court issued a Supplemental Opinion on Denial of Rehearing, dated February 5, 1976.) 343 N.E.2d 493 (1975, 1976).

2. The development and operation by Southern of the solid waste management site has caused and will continue to cause environmental damage in violation of the Act.

The Board has dealt with this case on several occasions, principally in an Interim Opinion and Order entered January 22, 1976. Also, on January 22 the Board proposed a Regulation to provide single-site consideration under Carlson v. Village of Worth, supra, for the solid waste management site in issue here. The Board's Statement of Need in connection with R76-2 included the following:

Pending the promulgation of generally applicable Regulations to guide the Agency in its permit-issuing capacity, we see no reason to hold in abeyance the consideration of the suitability of this site. In this manner the "unified statewide" system of regulation envisioned in Carlson, supra, can be effectuated immediately.

It is hoped that all of those who have expressed an interest in this site, in PCB 75-443 and PCB 76-8, will participate fully in this Regulatory matter.

In an Order entered April 8, 1976, the Board further stayed PCB 75-443 and PCB 76-8 for 75 days, on a Motion by Intervenor People.

Throughout the pendency of these causes, the Circuit Court of Cook County has had before it, in a separate proceeding, a similar case. Carlson v. EPA and County of Cook, No. 75 L 12530 (Cir. Ct. Co. Cty., Ill., Aug. 9, 1976). Although the entire history of that proceeding need not be given here, we do note that the Circuit Court's dismissal order of August 9, 1976 was on Stipulation of Southern and the Agency. That Stipulation, filed with Southern's

Motion to Dismiss herein, indicates that the Agency, on May 21, 1976, issued to Southern a "Supplemental Permit" for the site in question; that "Supplemental Permit" being based on Agency consideration of various land use and zoning data, as well as other information deemed relevant by the Agency. That information was submitted to the Agency by Southern and other parties pursuant to the Circuit Court's Interim Remand Order of March 22, 1976.

Inasmuch as Complainants Committee, et al. do not dispute Southern's allegations as to the Agency's consideration with regard to its "Supplemental Permit," and inasmuch as the Agency has not responded to Southern's Motion to Dismiss, the Board finds that PCB 76-8 (originally brought by the Agency against Southern) should properly be dismissed.

With regard to PCB 75-443, Southern argues that because the Agency has now made a "site suitability determination" with respect to Southern's site, and has issued its "Supplemental Permit" thereupon, this cause should be dismissed as moot. In response, Complainant Committee, et al. argues that:

1. They, not being parties to the Circuit Court suit, are not bound by its dismissal.
2. The Agency's issuance of that "Supplemental Permit" does not resolve the basic issues herein.
3. The propriety of the Agency's issuance of a permit during the pendency of R76-2 is questionable.
4. They have relied on the pendency of R76-2 to provide a forum concerning the suitability of Carlson's site.

In deciding whether to grant Southern's Motion to Dismiss PCB 75-443, we note that Complainant Committee, et al., alleged as the essence of their Complaint that the Agency gave no consideration to land use, zoning or any other question regarding the suitability of Southern's site. (Complaint, ¶15). Such consideration has now apparently been given. The remaining allegation in the Complaint, supra, that development and operation under the permit issued by the Agency to Southern will cause "environmental damage" (as well as other damage described in language taken directly from Section 20 of the Act) is not sufficiently specific to state a cause of action independent of the allegation that the Agency gave no consideration to land use, etc.

However, Complainants' statement that they relied on the pendency of R76-2 to provide a "forum" for their arguments and position concerning the suitability of Southern's site leads us to the conclusion that immediate dismissal is improper at this time. While the original cause of action herein has indeed been mooted by the Agency's issuance of the "Supplemental Permit," Complainants' response in opposition to Southern's Motion for Dismissal indicates that the central issue in this case -- the suitability of landfill operations to Southern's site -- remains in issue.

The original Complaint in PCB 75-443 (§ 13, 17) also indicates generally that Complainants dispute the site's suitability for landfill operations. To allow Complainants a "forum" to provide proof of that contention, and to prevent duplication of effort, we shall grant leave for appropriate amendment of the Complaint now before us.

Assuming, as we must, the propriety of the Agency's decision in granting Southern's "Supplemental Permit," and avoiding as we properly may, a decision on the propriety of the Agency's "Supplemental Permit" issuance during the pendency of R76-2, which is not before us here, we shall also dismiss R76-2 in a separate Order today. By dismissing R76-2, and allowing Complainants an opportunity to meet their strict burden of proof in the face of the Agency's presumably correct permit decision, we shall avoid duplication of effort while nonetheless allowing all parties a full and fair opportunity within the adjudicatory framework provided by the Act.

Complainant shall be granted leave to amend its Complaint within 30 days of the date of this Order in conformity with the foregoing, or as may otherwise be proper herein. Respondent Southern's Motion for Dismissal may be renewed if no such filing is forthcoming. The Agency's Enforcement case against Southern, PCB 76-8, shall be dismissed for failure to prosecute the action, and as a result of the Agency's failure to respond to Southern's Motion for Dismissal.

ORDER

IT IS THE INTERIM ORDER OF THE POLLUTION CONTROL BOARD that:

1. PCB 76-8 be, and hereby is, dismissed.
2. Action on Respondent's Motion for Order of Dismissal shall be deferred for thirty (30) days in conformity with the foregoing Interim Opinion.

Mr. James Young abstained.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Interim Opinion and Order were adopted on the 14th day of October 1976, by a vote of 4-0.

Christan L. Moffett

Christan L. Moffett, Clerk
Illinois Pollution Control Board