

ILLINOIS POLLUTION CONTROL BOARD  
June 6, 1972

ENVIRONMENTAL PROTECTION AGENCY )  
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 )  
 v. ) # 71-346  
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 )  
 MASCOUTAH TOWNSHIP )

Opinion & Order of the Board (by Mr. Currie):

The Agency's complaint, filed November 3, 1971, sought money penalties and an order closing a site at which solid waste had been disposed of allegedly in violation of the applicable law. On May 8, 1972, the Agency filed with us a purported "notice of dismissal" indicating that the case "is being dismissed by reason of the fact that the factual situation giving rise to this Complaint no longer exists." On May 17 we ordered the submission of additional information to enable us to determine, in accordance with our procedural rules, whether or not a dismissal would be in the public interest.

The Agency's supplemental statement, since received, recounts that the landfill in question had been the subject of a court proceeding filed before the present complaint; that the court had already ordered the landfill closed; that the court had enjoined the Agency from proceeding before the Board on the present complaint (presumably, although the statement does not say so, in order to avoid multiple litigation of a single case); that the injunction against the Agency had been lifted in consideration of the Agency's agreement to drop the present complaint upon closing of the site; and that the site has been closed in accordance with the Rules.

The termination of allegedly illegal conduct is not enough to moot a complaint seeking penalties for past violations; if it did the deterrent effect of the penalty provisions would be seriously undermined by allowing free violations until the offender is brought before the Board. We have imposed penalties in such cases in the past, e.g., EPA v. Alton Box Board Co., #71-318 (Jan. 6, 1971). On the other hand, we have recognized that the policy of conserving limited prosecutorial resources for important cases is relevant in considering whether or not to dismiss a complaint upon the Agency's motion after future compliance is assured. EPA v. Citizens Utilities Co., # 72-69

(April 17, 1972). As in Citizens Utilities, we need not today decide whether this policy alone justifies the prosecutor in dropping a case once filed, for in the present case the Agency has not only obtained, the cessation of the challenged conduct but has agreed as a part of the judicial settlement not to proceed before the Board. We deem the Agency's agreement in essence a part of the court order, and we must accept the court's judgment disposing of this litigation. In substance the issues raised by the complaint before us have been disposed of by court order, to which we must defer under the principles of res judicata.

The complaint is hereby dismissed.

I, Christan Moffett, Clerk of the Pollution Control Board, certify that the Board adopted the above Opinion & Order this 6<sup>th</sup> day of June, 1972, by a vote of 4-0.

*Christan L. Moffett*