

ILLINOIS POLLUTION CONTROL BOARD
November 1, 1971

ENVIRONMENTAL PROTECTION AGENCY)
)
 v.) PCB 71-52
)
 BATH, INC. AND JOHN L. WALKER)

BATH, INC., JOHN L. WALKER AND)
 JOHN H. WALKER)
)
 v.) PCB 71-244
)
 ENVIRONMENTAL PROTECTION AGENCY)

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

On September 16, 1971, the following order was entered in the above-captioned case:

1. Bath, Inc. and John L. Walker shall cease and desist from violation of the Rules and Regulations for Refuse Disposal Sites and Facilities and of the Environmental Protection Act as follows:
 - a) Refuse shall be spread and compacted as rapidly as it is admitted to the site.
 - b) Refuse shall be covered daily as required by the Rules.
 - c) Cinders shall not be used as cover material.
 - d) Salvaging shall be carried out in a sanitary manner, salvaged materials being removed from the site daily or properly stored as required by the Rules.
 - e) Underground burning shall not be permitted.
2. Bath, Inc. shall within 35 days after receipt of this order pay to the State of Illinois the sum, in penalty, of \$2000, the penalty to be borne by the corporate respondent.

Bath, Inc., John L. Walker and John H. Walker have filed a petition for review of the Board's September 16 order to the Illinois Appellate Court for the Fourth District and have subsequently moved this Board to stay the entire order pending resolution of the appeal. We shall grant the stay with respect to the monetary penalty we have imposed since we see no point in requiring money to be paid now if it may have to be repaid after judicial

review, however we shall stay our Order with regard to the assessment of penalty on condition that a bond to secure payment of the penalty in the event of an adverse judicial decision is filed with the Environmental Protection Agency within 15 days after receipt of this Order. As we have previously held, the purposes of our orders will be as well served by later payment if the appeal fails (see Spartan Printing Co. v. EPA, # 71-19, Supplemental Opinion and Order, October 14, 1971; Citizens Utilities Co. of Illinois v. EPA, # 71-125, Supplemental Opinion and Order, October 14, 1971).

We are also asked to stay those other portions of our order of September 16 which deal with the proper and legal manner in which the landfill site should be operated. It is our opinion that to do so could be to further delay the implementation of the law and the correction of the very ills which generated these cases in the first place. As in the Spartan and Citizens cases, we feel that there is no excuse for such delay especially in light of the fact that the necessary steps to correct the problems at the site could have been taken some time ago.

Accordingly, the penalty provision in paragraph 2 of our order of September 16 is hereby stayed, conditional upon the filing of the bond, pending judicial review. In all other respects, the motion for stay is denied.

I, Christan Moffett, Acting Clerk of the Pollution Control Board, certify that the Board adopted the above Supplemental Opinion of the Board this 1 day of November, 1971.

Christan Moffett