

ILLINOIS POLLUTION CONTROL BOARD  
January 22, 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  
ENVIRONMENTAL PROTECTION AGENCY, ) (Consolidated)  
 )  
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 number of preliminary motions and procedural matters, enumerated as follows:

1. Motion to Dismiss filed December 10, 1975, by Respondents CARLSON and KREGER, d/b/a SOUTH SUBURBAN LAND DEVELOPMENT CO., [hereinafter, collectively, "SOUTHERN"].
2. A Petition for Leave to Intervene filed on December 22, 1975, by the Attorney General for the People of the State of Illinois.
3. A Motion to Stay Permit filed by the original Complainants, [hereinafter, collectively, "COMMITTEE"].

4. An additional new case, PCB 76-8, filed on January 8, 1976, by the Environmental Protection Agency, [hereinafter, "AGENCY"], brought against the remaining original Respondents in PCB 75-443, SOUTHERN.

5. A Motion to Consolidate filed by the Agency on January 8, 1976.

6. A Motion to Realign Parties, also filed by the Agency on January 8, 1976.

I.  
MOTION TO DISMISS

Southern's December 10, 1975 Motion to Dismiss raised five separate grounds on which it sought to have this case terminated. The Motion is denied, and each of the five grounds offered is found to be without merit.

1. The Complaint is not duplicitous. Southern alleged that the issues raised in this case "duplicate" questions raised and decided by the Board in the Board Regulatory matter Proposed Solid Waste Regulations, R 72-5, 8 PCB 575 (1973) (Opinion at 8 PCB 695); the Board Permit Appeal adjudication Browning-Ferris Industries v. EPA, PCB 75-194, 18 PCB 320 (1975); and the Circuit Court of Cook County's decision in Carlson, et al., v. Briceland, et al., 75 L 12530 (November 20, 1975). The Board finds that the issues raised in the instant case are not duplicative of those considered by the courts or the Board in those cases. We find that the Complaints herein are neither duplicitous or frivolous.

2. The Board does not lack jurisdiction. The cases cited in Complainants' Memorandum in Opposition, filed December 22, 1975, correctly state the rule here: Rule 205(j) of the Solid Waste Regulations properly gives a necessary remedy to private citizens whom may be affected or have their rights under the Environmental Protection Act prejudiced by the Agency's issuance of a permit. It was the intent of the legislature in the Environmental Protection Act to assure a clean and healthful environment for all citizens; it was also the intent of the legislature in the Act that each citizen be able to enforce the rights granted there through the mechanisms of proper actions before this Board or in the Courts. Rule 205(j) merely provided a formal procedure for the enforcement of such rights before the Board.

3. The original pleading herein is adequate as an Enforcement Complaint, in a matter which the Board is competent to adjudicate under Title 8 of the Act.

4. The Complaint does specifically allege conduct in violation of the Act. The Complaint alleges that the Agency issued, and Southern is operating under, a permit issued in violation of the requirements of the Act as explained in Carlson v. Village of Worth.

5. Neither laches nor equitable estoppel bar the instant complaint or the relief asked, i.e., the revocation of the permit. The Board distinguishes the facts alleged here from those in Wachta v. Pollution Control Board, 8 Ill. App. 3d 436 (1972), or any of the other, similar cases cited by Southern on the issue of equitable estoppel. Nor do we find that Complainants have slept on their rights so as to give rise to the doctrine of laches.

In summary, we find that none of the grounds alleged by Respondents in the Motion to Dismiss have merit.

II.  
THE PEOPLE'S MOTION TO INTERVENE

The People's Motion to Intervene is herewith granted.

III.  
MOTION TO STAY PERMIT

The Board has no authority to enter or enforce, in situations of this type, temporary injunctions or restraining orders. Since a request that the Board do so is the essence of this Motion, it must be denied.

IV.  
THE NEW CASE, PCB 76-8

The Complaint filed by the Agency is adequate, and is docketed as shown.

V.  
MOTION TO CONSOLIDATE

The Agency's Motion to Consolidate PCB 76-8 and PCB 75-443 shall be granted.

VI.  
MOTION TO REALIGN PARTIES

The Agency's Motion to Realign is denied.

The Supreme Court in Carlson v. Village of Worth characterized the Agency, the permit-issuing authority, as the party to properly evaluate the complex issues of sanitary landfill siting. The Act states that the Agency is to issue such permits within a regulatory scheme enacted by the Board. This is consistent with various statements made by the Agency since the Supreme Court decided O'Connor v. Rockford in 1972. See, Browning-Ferris, supra, Opinion at 4; Ex. 48 to R 72-5, supra (appended to Respondents' Motion to Dismiss in PCB 75-443).

The Board will, in a separate action today, set for hearing a Regulatory Proposal to consider the siting criteria appropriate for the sanitary landfill in issue here. We shall limit the issues to be considered in that proposed Regulation to those bearing on Southern's site, in relationship to the various factors enumerated in the Act. During the pendency of the Regulatory procedure, the one-year limitation for commencement of development contained in Southern's permit is tolled. This procedure is consistent with the concept of statewide regulation envisioned in the Act and Carlson v. Village of Worth, but is limited to the narrow facts before us in this case.

On our own Motion, we shall stay these consolidated cases pending the outcome of the Regulatory proceeding described above.

This Interim Opinion and Order constitutes the findings of fact and conclusions of law of the Board in this matter.

#### INTERIM ORDER

1. Motion to Dismiss filed December 10, 1975 by Respondents Carlson and Kreger, d/b/a South Suburban Land Development Co., is denied.
2. Petition for Leave to Intervene filed by the Attorney General on December 22, 1975 is granted.
3. Motion to Stay Permit filed by Complainants Committee to Save our Environment et al., on December 29, 1975, is denied.
4. Motion to Consolidate cases PCB 75-443 and PCB 76-8, filed by the Environmental Protection Agency on January 8, 1976, is granted.
5. Motion to Realign Parties filed on January 8, 1976, by the Environmental Protection Agency is denied.

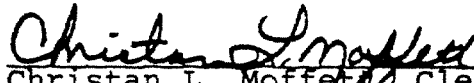
6. On the Board's Motion, the consolidated cases PCB 75-443 and PCB 76-8 are stayed pending resolution of the Regulatory matter, R 76-2, in conformity with the foregoing Interim Order. The one-year limitation for commencement of development contained in Respondents' permit No. 1975-39-DE is tolled pending completion of that Regulatory proceeding.

IT IS SO ORDERED.

Mr. James Young abstained.

Dr. Donald Satchell abstained.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Interim Opinion and Order was adopted on the 22nd day of January, 1976, by a vote of 3-0.

  
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Christan L. Moffett, Clerk  
Illinois Pollution Control Board