

ILLINOIS POLLUTION CONTROL BOARD

October 4, 1973

KATHRYN O'CONNOR, ET AL,)	
)	
Complainants,)	
)	
vs.)	PCE 73-3
)	
THE CITY OF ROCKFORD, A MUNICIPAL)	
CORPORATION,)	
)	
Respondent.)	

MAYNARD & BRASSFIELD ON BEHALF OF COMPLAINANTS
A. CURTIS WASHBURN, ASSISTANT CITY ATTORNEY, ON BEHALF OF CITY
OF ROCKFORD

OPINION AND ORDER OF THE BOARD (by Mr. Henss)

Complaint was filed by Kathryn O'Connor and others, against the City of Rockford, alleging that a permit authorizing the City to install and operate a solid waste disposal site in the unincorporated area of Winnebago County was improperly issued by the Environmental Protection Agency. The permit was issued on May 26, 1972 at a time when the Rules and Regulations for Refuse Disposal Sites and Facilities were in effect. Those Rules provided:

Rule 201

"All refuse disposal site locations shall conform to applicable State laws and county or municipal zoning laws and ordinances".

Rule 2.03

"Access roads to the disposal site shall be of all-weather construction and negotiable at all times by trucks and other vehicles."

Complainants contend that the requirements of Rules 201 and Rule 2.03 were not met and request the entry of a temporary cease

and desist order pending hearing on the merits of the Complaint, the revocation of the permit, and the entry of a permanent cease and desist order preventing installation or operation of a solid waste disposal site on the land involved.

The Supreme Court of Illinois in O'Connor v. City of Rockford, 52 Ill. 2nd 360, has entered a decision involving the same land and the same parties as in the instant complaint. The present permit was not involved in the Supreme Court decision. We directed the parties to submit briefs discussing the legal implications of the Supreme Court Opinion in the context of the instant complaint. In addition, we granted the Environmental Protection Agency leave to file a brief amicus curiae. An appearance was filed by Bartholomew & Meyer on behalf of South Suburban Land Development Company, purportedly under Rule 106 but without prior motion or Order of the Board. Briefs were received from the parties and the Environmental Protection Agency.

Condition 8 of the permit in question states:

"This permit is void one year from the date of issue unless installation of this project has started on or prior to the date of expiration."

On August 1, 1973 the Attorney General informed us that Condition 8 of the permit had not been met, that the permit had lapsed and that the controversy so far as the present complaint is concerned is moot. A letter from complainants counsel does not dispute the mooting of the present controversy, but states that a new application for permit has been filed by the City with the EPA, and that the same issues raised in the present complaint conceivably would again be raised should a new permit be granted. The EPA has apparently not yet ruled upon the new application for permit.

At this point it should be noted that we adopted new Solid Waste Regulations on July 19, 1973. The current Regulations do not contain the language which had formerly been included in Rule 201 and Rule 2.03. Therefore, it would be entirely a matter of speculation to say that the same issues are presented in the new permit proceeding.

The Board can act only on the basis of what is before it and cannot render advisory or declaratory opinions respecting the legal consequences of future events, which may or may not occur. The May 26, 1972 permit is all that is presently before us and it appears to have expired by its own terms, assuming that no installation had been initiated prior to May 26, 1973. While similar issues may be involved as a consequence of the issuance of a new permit, if the May 26, 1972 permit has lapsed there is presently nothing before the Board for adjudication.

We have received nothing from the City of Rockford which specifically indicates whether it has abandoned such rights as it may have possessed under the May 26, 1972 permit, or whether Condition 8 is not applicable because of installation having been initiated prior to the expiration date.

If the City of Rockford contends that the permit is still in force and effect, we should be so advised and will enter such further orders as may be appropriate. If, on the other hand, we are advised by the City of Rockford that it acquiesces in the view expressed by the Attorney General on behalf of the Environmental Protection Agency that the permit has lapsed, we will dismiss the present proceeding as moot. Such issues as might arise when the EPA grants or denies a new permit pursuant to a new application, can only be adjudicated after the event and in a new proceeding filed relating to the application or permit then in contention. Our present jurisdiction is based solely on the May 26, 1972 permit.

We direct the City of Rockford to advise the Board, within 15 days from the receipt of this Order, of its position with respect to whether the May 26, 1972 permit is still in force and effect, and if so, the reasons therefore, or whether the permit has lapsed by its own terms.

Upon receipt of this information, we shall enter such further orders as are appropriate.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, certify that the above Opinion and Order was adopted on the 4th day of October, 1973 by a vote of 5 to 0.

Christan L. Moffett

