

ILLINOIS POLLUTION CONTROL BOARD
May 18, 1995

ESG WATTS, INC.,)
)
 Petitioner,)
)
 v.) PCB 95-133
) (Permit Appeal-Land)
)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Respondent.)

ORDER OF THE BOARD (by G. T. Girard):

This matter is before the Board on a April 28, 1995, motion by petitioner for stay. On May 5, 1995, the Board received a response filed by the Illinois Environmental Protection Agency (Agency) objecting to a stay. Petitioner is asking that the Board stay the effect of the Agency's denial of petitioner's permit application for a permit to receive calcium sulfite cake waste from American Xyrofin, Inc.. (Mot. at 2.)

The petitioner points out that it has been permitted to accept calcium sulfite since at least 1987. (Mot. at 2.) Petitioner filed its permit renewal application on or about December 23, 1994. (Mot. at 3.) The permit under which petitioner was then receiving waste was set to expire on March 16, 1995. (*Id.*) The Agency denied the permit renewal on March 23, 1995, citing two denial points. (*Id.*) The two denial points were Petitioner's "history of repeated violations" and that petitioner failed to designate an appropriate "Land Disposal Restricted Waste Code" on the permit renewal application. (Mot. at 3.) On April 19, 1995, the petitioner filed this instant appeal.

The Board's regulations provide that the existing permit shall continue in full force and effect pending an appeal to the Board provided that a timely permit renewal application was made to the Agency. (35 Ill. Adm. Code 813.302.) The appropriate Board rule defines timely, in this case, as 90 days prior to the expiration of the original permit. (35 Ill. Adm. Code 813.301; Mot. at 4.) Petitioner did not file the application for permit renewal 90 days prior to the expiration of the original permit and therefore is asking the Board to stay the permit denial by order of the Board.

The petitioner cites to two cases in which the Board has considered granting a discretionary stay. Those cases are: Interstate Pollution Control, Inc. v. IEPA, (Interstate) PCB 86-16, 68 PCB 547 (March 27, 1986) and Motor Oils Refining Co. v. IEPA, (Motor Oils) PCB 89-116 102 PCB 249, (August 31, 1989). In

Interstate the Board granted a stay determining that the economic hardship that could be caused if a stay were not granted outweighed the environmental harm. Also of importance to the Board was the likelihood of the petitioner prevailing on the merits. (Interstate at 4-5.) The Board found in Motor Oils that the potential environmental harm warranted a denial of a stay. (Motor Oils at 2.) Petitioner argues that the Agency has "routinely granted permits" to accept calcium sulfite cake waste to the petitioner for the past eight years. (Mot. at 5.) Further, the petitioner maintains that the denial is not "based upon any legitimate technical grounds". (Mot. at 5.) Finally, petitioner asserts that the denial will "have a devastating effect upon Petitioner's financial status". (Mot. at 5.)

The Agency objects to the Board granting a stay in this proceeding. The Agency maintains that the instant matter is distinguishable from other cases where the Board has granted a discretionary stay. (Res. at 3.) The Agency argues that the representations by petitioner do not "show the petitioner is likely to prevail" in this matter and the stay should be denied. (Res. at 3.)

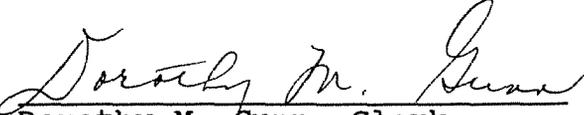
The Board first notes that the petitioner has created this issue by its failure to timely file the application for permit renewal. However, the application was mailed only five days late and this is a request for renewal of a permit which has been held by petitioner for at least eight years. Further, calcium sulfite cake waste is not a hazardous waste according to the petitioner. Therefore, the Board is convinced that, at this time, the continued acceptance of this waste poses no threat of additional environmental harm while the financial implications are potentially significant to petitioner. The Board makes no findings on the merits of the case as a whole at this time.

Based on the above, the Board will grant the requested stay.

IT IS SO ORDERED.

Chairman Claire A. Manning dissents.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 18th day of May, 1995, by a vote of 5-1.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board