

ILLINOIS POLLUTION CONTROL BOARD  
April 25, 1991

TRANSTECHNOLOGY CORPORATION, )  
 )  
 Petitioner, )  
 )  
 v. ) PCB 91-39  
 ) (Permit Appeal)  
 ILLINOIS ENVIRONMENTAL )  
 PROTECTION AGENCY, )  
 )  
 Respondent. )

ORDER OF THE BOARD (by B. Forcade):

On March 1, 1991, TransTechnology Corporation filed a Petition for Review of Cleanup Objectives. By Order of March 8, 1991, the Board directed the parties to file briefs on the issue of the Board's jurisdiction in this matter. On March 22, 1991, Petitioner filed its response to the Board's Order. Also on March 22, 1991, the Illinois Environmental Protection Agency ("Agency") filed its comments and motion to dismiss.

Petitioner asserts that jurisdiction is based on due process considerations, the Board's quasi-judicial authority to review final determinations under Section 5(d) of the Environmental Protection Act ("Act"), and the Board's rulemaking authority under Title V of the Act, Land Pollution and Refuse Disposal. Petitioner asserts that it believed filing of the petition was necessary to preserve its rights which would have been extinguished by the passage of the filing deadline. See Pet. Resp. at p. 3.

The Agency states that the Board lacks jurisdiction because the Agency has not set a "standard" under Section 5(b) of the Act. Furthermore, Petitioner is not required to meet the objectives nor is Petitioner subject to sanctions.

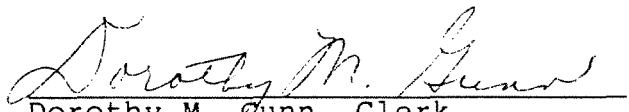
The Agency also argues that neither Section 5(d) of the Act nor Section 105.102 of the Board's rules establish the Board's jurisdiction since neither a permit appeal nor closure plan appeal is involved. Furthermore, the Agency's letter is not a final Agency determination, which terminates the matter before the Agency or affects Petitioner's legal rights, duties or privileges. In support of its position, the Agency cites the Administrative Review Act (Ill. Rev. Stat. 1989, ch. 110, par. 1-101 et seq.); Castleman v. Civil Service Commission of City of Springfield., 58 Ill. App. 2d 25, 206 N.E.2d 514 (1965); and the absence of Board regulations which provide for hearings on this matter.

The Agency states also that Petitioner can seek modification or reconsideration of the objectives with the Agency. Petitioner can withdraw from the voluntary program and enjoy "the same rights as if the services of the IEPA were never requested." Ag. Comments at p. 4.

For the reasons articulated by the Agency, the Board finds that it lacks jurisdiction to hear this matter. This issue has been resolved similarly on the federal level in the case of Burnham Corp. v. EPA, 32 ERC 1666 (S.D. Ohio, No. C2-88-0562 October 25, 1990).

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 25<sup>th</sup> day of April, 1991 by a vote of 2-0.

  
Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board