

ILLINOIS POLLUTION CONTROL BOARD

July 1, 1982

TRADE WASTE INCINERATION, INC., )  
 )  
 ) Petitioner, )  
 )  
 ) v. ) PCB 82-68  
 )  
 ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, )  
 )  
 ) Respondent. )

ORDER OF THE BOARD (by J. Anderson):

In its permit appeal of May 28, 1982 and again in its June 16, 1982 emergency motion for stay, Trade Waste Incineration, Inc. (TWI) has requested the Board to stay all of the contested conditions of its April 28, 1982 operating permit. The conditions contested are: No. 1(d-e) relating to maximum ash content, No. 7 relating to maintenance of minimum incinerator temperatures, No. 9 relating to operation of control equipment during preheating, Nos. 10 and 11 relating to supplemental permits and manifest discrepancy tests, No. 12 relating to sampling procedures, and No. 13 relating to monthly reports. The basis for the motion, essentially, is a) that these conditions were ruled invalid by the Board in its decision in Alburn v. IEPA, PCB 80-189, 190, February 17, 1980 and b) that the Agency has been denying supplemental permits in reliance on these conditions and advising TWI customers "that the Alburn ruling was not in effect", with the result that TWI is suffering irreparable economic harm as a result of these "improper" permit conditions.

In its Motion in Opposition of June 24, 1982 the Agency requests that the motion be denied in its entirety. First, it suggests that the motion is moot if the Board should find, consistent with its decision in Alburn May 1, 1981, that TWI's prior operating permit issued March 24, 1982 continues in effect during the pendency of this appeal of the April 28, 1982 operating permit.

The March permit, which was not appealed, contains essentially the same provisions as the April permit. The only apparent substantive differences between the two are that the latter permit is more permissive, additionally allowing for the burning of Type 0 waste [1(a)] and wastes which are hazardous only due to ignitability [1(e)]. As procedural rules concerning Chapter 2 permits were in place prior to the effective date of the Illinois Administrative Procedures Act, the Board is not mandated to hold that the March permit continues in effect. The Board holds that

the latter more permissive permit shall continue in effect during the pendency of its appeal, given that the two permits' operating requirements are nearly identical. As TWI's motion is accordingly found not to be moot, the Board will proceed to consider the Agency's other arguments.

The Agency notes that of the contested conditions, only Conditions 10, 11 and tangentially 12 were the subject of Board consideration in Alburn. As no other grounds for stay were argued, the Agency believes a stay should be denied.

As to the Alburn-related conditions, the Agency essentially argues that the facts of this case distinguish it from Alburn sufficiently so as to preclude an immediate finding that the Alburn case controls, and therefore invalidates the challenged conditions.

The Agency further alleges that a stay of the contested conditions could result in environmental harm. The instant permit does not require monitoring of hydrocarbon emissions, and it is alleged that TWI has no hydrocarbon monitoring capability, so that control of materials entering the incinerator is necessary to prevent emission of toxic materials from the incinerator stack. The Agency notes that TWI has in fact applied for (and been denied) permits to incinerate toxic and carcinogenic substances which, if a stay were granted, could then be incinerated.

The Board finds that TWI has failed to make a persuasive showing of a need for a stay. No showing at all was made as to the non-Alburn conditions. As to Conditions 10, 11, and 12, TWI has not even argued why and how its situation is similar to that in Alburn, whereas the Agency has suggested several reasons why the situations are distinguishable. In light of these deficiencies, TWI's allegations of irreparable harm are more than overbalanced by the Agency's allegations of potential irreparable environmental harm. The motion for stay is therefore denied in its entirety.

IT IS SO ORDERED.

I, Christian L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 1<sup>st</sup> day of July, 1982 by a vote of 5-0.

  
 Christian L. Moffett, Clerk  
 Illinois Pollution Control Board