

ILLINOIS POLLUTION CONTROL BOARD
March 5, 1981

ILLINOIS POWER COMPANY,)
(Decatur),)
)
Petitioner,)
)
v.) PCB 80-196
)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

MS. CAROLYN A. LOWN, SCHIFF HARDIN & WAITE, APPEARED ON BEHALF OF THE PETITIONER.

MR. SCOTT O. PHILLIPS, ATTORNEY AT LAW, APPEARED ON BEHALF OF THE RESPONDENT.

OPINION AND ORDER OF THE BOARD (by D. Satchell):

This matter comes before the Board upon a petition for review of special waste hauling permit No. 0596, issued by the Illinois Environmental Protection Agency (Agency) to Illinois Power Company (IPC) on September 29, 1980. The petition was filed on October 24, 1980. The Agency record was filed on November 3, 1980. An amended petition deleting paragraph 3 from the petition for review was filed December 19, 1980. A hearing was held in Decatur, Macon County on January 16, 1981. The parties presented a proposed settlement. Members of the public attended but did not comment.

Rule 201 of Chapter 9: Special Waste Hauling Regulations requires a special waste hauling permit of any person who hauls or otherwise transports special waste. Rule 205 provides for inclusion of special conditions in Chapter 9 permits. IPC has appealed, pursuant to Procedural Rule 502(a), the issuance of the permit with conditions. Of the three conditions originally in dispute only two remain, as set forth in paragraphs 1 and 2 of the petition for review.

IPC objected to standard condition No. 4 of the permit in that it could be construed as being a waiver by IPC of its constitutional right to a warrant before an inspection is made. The Agency and IPC have agreed that the following special condition shall be added to the permit:

Standard condition No. 4 shall not constitute a waiver of any constitutional right of the permittee.

IPC objected to standard condition No. 16 which related to modification of permits upon promulgation of new regulations. IPC believed the condition "was unclear as to which agencies would be promulgating the rules and regulations which could result in modification" and that they should be entitled to time to achieve compliance in the event the permit were modified. The Agency and IPC have agreed to strike standard condition No. 16 from the permit and insert in its place the following two special conditions:

This permit may be modified or revised to incorporate applicable new or amended Illinois Pollution Control Board Rules or Regulations, Regulations promulgated by the United States Environmental Protection Agency pursuant to the Resource Conservation and Recovery Act of 1976 as amended (RCRA), or Amendments to RCRA. Such Rule, Regulation or Amendment shall become part of this permit on the effective date of the Rule, Regulation or Amendment. The Agency will notify each affected permittee of such incorporation.

Special Condition No. 3 shall not prejudice the permittee's right to obtain or be granted a reasonable time in which to comply, but in no event shall such time be later than any applicable Federal or State of Illinois statutory or regulatory compliance date, in connection with any modification made pursuant thereto.

The permit will be remanded to the Agency for issuance of a new permit or modification of the outstanding permit consistent with the parties' settlement agreement and the terms outlined above.


This Opinion constitutes the Board's findings of fact and conclusions of law in this matter.

ORDER

Special waste hauling permit No. 0596 is remanded to the Illinois Environmental Protection Agency for issuance to Illinois Power Company of a permit consistent with the settlement agreement and the Board's Opinion in this matter.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order were adopted on the 5th day of March, 1981 by a vote of 5-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board