

ILLINOIS POLLUTION CONTROL BOARD
February 10, 1983

FRINK'S INDUSTRIAL WASTE, INC.,)
)
) Petitioner,)
)
) v.) PCB 83-10
)
ILLINOIS ENVIRONMENTAL PROTECTION)
AGENCY,)
)
) Respondent.)

ORDER OF THE BOARD (by I.G. Goodman):

On January 27, 1983 the Board granted Petitioner a temporary stay to maintain the status quo of the Frink's Industrial Waste, Inc. (Frink's) operation pending the receipt of the Illinois Environmental Protection Agency's (Agency's) Response to Petitioner's Emergency Motion for Stay. That Response was received on February 4, 1983. Petitioner filed a Reply on February 8, 1983 which is accepted.

Solely at issue in this matter are the operating permits from the Division of Air, Land, and Water for four storage tanks owned and operated by Petitioner which were denied on January 19, 1983. (Pet. Ex. 19). Petitioner is seeking to stay the effect of denial of these operating permits, since its experimental permits expire on February 5, 1983, so that it may continue operating pending the outcome of this appeal. Petitioner argues that it developed these tanks under development permits issued by the Agency and has operated them for several years under Agency issued experimental permits. Without the requested stay, Petitioner would have to cease operations, depriving its customers of service, and possible forcing Petitioner out of business. Petitioner further argues that proof of the tanks' integrity has been certified to on August 23, 1983 with a September 3, 1982 addendum (Pet. Ex. 12) and accepted by the Agency on September 15, 1982 (Pet. Ex. 14) and yet the Agency denied the operating permit due to inadequate proof that Section 39(a) of the Act was satisfied.

The Agency argues that beginning in August, 1982 samples taken from monitoring wells reveal increasing concentrations of chlororganics. When first detected, the Agency states that its source was speculated to be contamination from sludge in a nearby lagoon, leaking underground tanks, and "even" a 1981 caustic spill. Nowhere, other than in the permit denial letter, does the Agency

link the contamination to the four storage tanks at issue. The Agency's principal argument is that operation of the same should cease until they are definitely ruled out as a contributing source of the pollution.


Beyond the scope of this appeal, but of import because both parties have alleged it to be the possible source of the detected land and groundwater contamination, are the June events involving the nearby sludge lagoon previously operated by Frink's. Prior to June, 1982 soil and groundwater samples taken in connection with this lagoon did not reveal any contamination. On June 23, 1982 and continuing thereafter this closed lagoon was disturbed by sampling and excavation. It has been the samples taken since that time, the most recent being an December 30, 1982 sample, which reveal contamination. Based on this sequence of events involving the lagoon and certification of the tanks' integrity, the Board is not persuaded that these tanks are a contributing source of the environmental damage now evidenced. The stay is granted until final action in this matter.

Petitioner's Reply brought to the Board's attention that 32 supplemental permits (Pet.Ex. 30) were denied renewal on January 27, 1983 by the Agency. These permits are attendant to the operating permits denied in that they involve the special waste streams to be accepted for storage by Petitioner. (The Board notes that Petitioner had granted the Agency a 90-day waiver on the renewal decision period, so decision on these permits need not to have been made at this time.) Since the grant of the previous temporary stay on January 27, 1983 and this stay invalidates the reasons given in denying the supplemental permits, the Board anticipates that the Agency will reconsider its actions.

IT IS SO ORDERED.

Board Member Joan Anderson concurred.

I, Christian L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 10th day of February, 1983 by a vote of 5-0.



Christian L. Moffett, Clerk
Illinois Pollution Control Board