

ILLINOIS POLLUTION CONTROL BOARD
March 25, 1993

OLIN CORPORATION,)
)
Petitioner,)
)
v.) PCB 89-30
) (Permit Appeal)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

ORDER OF THE BOARD (by J. C. Marlin):

This matter is before the Board on a January 15, 1993, motion to dismiss filed by the Illinois Environmental Protection Agency (Agency). On January 19, 1993, Olin filed an objection to the Agency's motion and a motion to vacate closure plan approval and remand consideration of the pending permit modification or other relief. On February 23, 1993, the Agency filed a motion for extension of time in which to reply to Olin. The extension of time was granted by Board order on March 11, 1993. On March 16, 1993, the Agency filed an objection to Olin's motion to vacate. On March 24, 1993, Olin filed a motion to strike or motion for leave to file a reply to the Agency's response.¹

The Board grants Olin's motion for leave to file a reply.

BACKGROUND

The underlying permit appeal in this case was filed on February 10, 1989. It was an appeal from the Agency's grant of Resource Conservation and Recovery Act (RCRA) Part B closure plan approval for what is known as the Zone 6 Emergency Wastewater Holding Lagoon (Lagoon) subject to several conditions. (Pet. at 1-3.) On November 20, 1990, Olin petitioned the Board for an adjusted standard for its Lagoon. The permit appeal in the instant case is directly related to the adjusted standard.

The Board granted Olin's request for an adjusted standard on February 27, 1992. In the Matter of: Petition of Olin Corporation for an Adjusted Standard from 35 Ill. Adm. Code 724 and 725 Related to Closure and Post Closure of RCRA Regulated Surface Impoundments, (February 27, 1992) 130 PCB 130, AS 90-8,

¹The motion and response by the Agency will be cited as (Mot.) and (Resp.) the motion and reply by Olin will be cited as (O. Mot.) and (Rep.).

(adjusted standard). The adjusted standard allows Olin to operate the Lagoon for the receipt of non-hazardous wastewater until the year 2039 subject to certain conditions.

ISSUE

The Agency argues in its motion that the adjusted standard proceeding has rendered this case moot because all issues were resolved by the Board's order in the adjusted standard proceeding. (Mot. at 3.) The Agency also argues that it has asked Olin to submit a request for Class II modification of its Part B Permit "in order to enable the Agency to issue the adjusted standard as part of the permit modification." (Mot. at 2.) According to the Agency, Olin has not responded to this request. (Mot. at 2.) Additionally, the Agency requests that the Board order Olin to submit a request for Class II modification of its Part B Permit. (Mot. at 3.)

Olin in its objection moves to vacate and remand the closure plan approval under review in this proceeding or in the alternative to stay this proceeding. (O. Mot. at 1.) Olin represents that it requested a modification of the existing permit at the time it submitted the request for the adjusted standard. (O. Mot. at 2.) Olin also argues that it has requested the Agency to process the Amended Plan for Delayed Closure as a permit modification. (O. Mot. at 3.) Additionally, Olin states that all issues relative to the Lagoon have been resolved by the adjusted standard proceeding. (O. Mot. at 2.) Olin also argues that the Board's action in the adjusted standard proceeding eliminates the basis for the Agency's authority to issue the permit conditions which were originally appealed.

In its response, the Agency argues, that the information given to the Agency pursuant to the adjusted standard is not part of the record in this proceeding. (Resp. at 2.) The Agency also states that vacation of the closure plan approval, the relief sought by Olin, is not available. (Resp. at 2.) Additionally, the Agency argues that Olin has never submitted a request for Class II Part B Permit modification to the Agency as a means to resolve this proceeding. (Resp. at 2.) The Agency also asks that the Board dismiss this action with prejudice and order Olin to submit a permit modification request within thirty days of the Board's decision date. (Resp. at 3.)

Olin in its reply argues that when it requested that the Agency participate in the adjusted standard proceeding it asked the Agency to consider permit requirements. (Rep. at 1-2.) Additionally, Olin argues that it has requested the Agency consider the adjusted standard as a permit modification request. (Rep. at 2.) Olin also argues that the closure plan which was the subject of this appeal is no longer applicable and should not

Agency's assertions that the adjusted standard is not before the Board in this proceeding are inaccurate. Olin states that the parties are the same and requests that the Board take notice of the adjusted standard proceeding. (Rep. at 3.) Olin also states that it has no objection to proceeding in a timely and expeditious manner through the Agency's permit review process. (Rep. at 3.) However, Olin does not wish this proceeding to be dismissed because Olin believes the closure plan under review in this case might then be deemed enforceable. (Rep. at 3.)

DISCUSSION

This 1989 appeal is complicated in that it involves the same issues as the 1992 adjusted standard. However, the Board can not vacate a 1989 decision of the Agency based upon a 1992 action. The Board instead must review this appeal based upon what information was before the Agency at the time of its decision. Additionally, if the Board were to grant Olin's motion and vacate the original closure plan under appeal in this case, Olin would have no permit for the time periods involved.


Therefore, the Board grants Olin's motion for stay in this matter for 120 days until July 23, 1993, in the hope that the parties will come to an agreement and be able to dismiss this appeal. If the parties can not reach an agreement this case will be set for hearing.

The parties are ordered to file a status report with the Board on or before June 1, 1993. Olin's motion to vacate and the Agency's motion to dismiss are denied.

IT IS SO ORDERED.

J. Anderson concurred.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 25th day of March, 1993, by a vote of 6-0.


 Dorothy M. Gunn, Clerk
 Illinois Pollution Control Board