

ILLINOIS POLLUTION CONTROL BOARD  
October 25, 1984

WASTE MANAGEMENT, INC.,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 84-45
	)	84-61
ILLINOIS ENVIRONMENTAL	)	84-68
PROTECTION AGENCY,	)	(Consolidated)
	)	
Respondent.	)	

ORDER OF THE BOARD (by J. Anderson):

In response to the Board's Opinion and Order of October 1, 1984, several motions for reconsideration were filed on or before the October 12 deadline established therein. These motions are those of: October 9 - Topolski, October 10 - Ruettinger, Rourke, Brockett, October 11 - Marr, October 12 - the Agency, by the Attorney General. A motion received October 15 from Judy Garthus bearing an October 4 date will also be accepted by the Board.

In addition to the motion for reconsideration, the Agency also filed a motion to strike paragraph 5 of p. 38 of the Opinion, shortening the time for filing of motions for reconsideration from 35 days to 11 days. Alternatively, the Agency seeks an additional 35 days from today's date to supplement its October 12 filings. Finally, the Agency also filed a motion for stay of the October 1 Order pending appellate review. Waste Management, Inc. (WMI) filed a responses in opposition to all pending motions on October 22, 1984. The response includes motions to strike various portions of the above-listed motions.

The various motions for reconsideration are granted. As to the Agency's motion to strike, the shortening of the reconsideration period was an action taken by the Board on its own motion based on the Board's perceptions, as indicated throughout the Opinion, that 1) WMI has been without disposal capacity since sometime in 1983, and losing revenue at an estimated rate of \$20,000 week and has pressed for a speedy decision in this matter, 2) the parties' relative legal positions had been developed throughout this action, and had been vigorously advocated, and 3) given the course and nature of this action, that one or more parties would wish to pursue an appeal of those portions of the decision adverse to the party. The Attorney General argued that the Board's action "violates the procedural due process rights of the Agency which should have 35 days to analyze a 39-page complex order" (Motion, p. 3).

While motions for reconsideration are customarily entertained by agencies, they are not essential to due process, see Davis, "Administrative Law Treatise," §8.18 (1st ed. 1958). While the Board does not customarily or lightly depart from its procedural rules, the Board has been found to have discretion to do so provided that the proceeding conforms to "fundamental principles of justice," see Lloyd A. Fry Roofing Co. v. IPCB, 20 Ill. App. 3d 301, 314 N.E. 2d 350, 359 (1974). The Board believes that its exercise of discretion was sound. The Agency's motions are denied.

This leaves for resolution, then, the merits of the various motions for reconsideration, and of the Agency's motion for stay. In its October 1 Opinion, the Board had stated its intent to decide all motions today. However, in its motion for reconsideration, the Agency raises for the first time the question: whether in its review of permit appeals, the Board must articulate and apply the evidentiary standard used by appellate courts in review of administrative decisions, the manifest weight of the evidence standard. Waste Management argued that the manifest weight standard does not apply on the grounds that, in a permit appeal, the Board does not sit in appellate review of an Agency "adjudicatory function."

Since the time of the filing of WMI's response late in the day on October 22, the Board has been unable to complete an independent search for case law which may be pertinent to this subject. The Board believes, however, that this is a matter of first impression. Supplementation of the initial briefs and arguments is essential to a well-reasoned approach by the Board to a novel issue. The Agency is requested to file supplemental argument on this issue on or before November 5. In addition, given the collapse of the Board's projected timetable for final action in this matter, the Agency is given leave to file supplemental authority and argument concerning any point raised in its October 12 motion to reconsider; no new "points of error" may be raised. Any response by WMI is to be filed on or before November 16.

This schedule is designed to allow Board decision of all pending motions on November 21, 1984. The Board notes that its October 1, 1984 Order would by its terms require permit issuance within 45 days, which computes to November 15. The Board, as an interim measure, will stay that Order through November 21. The merits of a continuing stay to allow for appellate review as requested by the Agency will be considered at that time.

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 October, 1984 by a vote of 5-0.

Dorothy M. Gunn  
Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board