

ILLINOIS POLLUTION CONTROL BOARD
April 8, 1976

WINNETKANS INTERESTED IN PROTECTING)
THE ENVIRONMENT (WIPE),)
)
Petitioner,)
)
v.) PCB 75-363
)
VILLAGE OF WINNETKA,)
)
Respondent.)

ORDER OF THE BOARD (by Mr. Young):

This matter comes before the Board on Respondent's Motion for Reconsideration of our Order entered February 19, 1975. In that Order the Board dismissed an enforcement action against Respondent which alleged violation of Rule 203(g)(1) of Chapter 2, but refused to dismiss that portion of the Complaint which alleged violation of Rule 103(b)(2) and Section 9(b) of the Act. Subsequent to our Order, Respondent filed a Petition for Review in the Illinois Appellate Court, First District. In view of this action, Respondent also requests a Stay of Proceedings and a Certificate of Importance concerning issues involved herein.

As a basis for the Motion, Respondent contends that it has a complete defense to the alleged permit violation because the grounds for denial of Respondent's application were failure to show compliance with Rule 203(g)(1). Taken one step further, the position of the Respondent seems to be that since Rule 203(g)(1) was held to be invalidly adopted, a permit previously denied would issue by operation of law and that the Agency and this Board are forever precluded from any further inquiry concerning the effect of Respondent's particulate emissions upon the public health and welfare and upon the attainment and maintenance of ambient air quality standards prior to issuance of the permit irrespective of the policy set forth by the General Assembly in Section 8 of the Act; and compliance with the remaining regulations of Chapter 2 of our Rules and Regulations and the substantive provisions of Sections 9 and 39 of the Act.

Respondent contends that our position exalts form over substance in a manner contrary to applicable court orders. No authority is cited by Respondent for this contention and the Board has likewise been unable to find such authority;

we rather believe our position exactly opposite. An examination of the opinions of both the Illinois Supreme Court and the Appellate Court for the First District [Commonwealth Edison v. PCB, Ill. Sup. Ct. Docket 47352 (January 20, 1976); Commonwealth Edison v. PCB, 25 Ill. App. 3d 271; 323 N.E. 2d 84 (1st Dist. 1974)] will disclose that neither court found that effective removal technology for control of particulates was unavailable nor suggested that particulate emissions be uncontrolled until new regulations were adopted by the Board.

In order to receive a permit, an applicant must prove to the Agency that the operation of the facility will not cause a violation of the Act or Regulations. Section 39 of the Act gives the Agency authority to withhold permits if the application does not contain such proof. When the Agency denied the permit in this case, it cited as grounds a regulation which then assured compliance both with the Act, the Regulations and ambient air quality standards. Since that regulation has been subsequently held invalid, Respondent is not entitled to a permit without any further action on his part, but must re-submit an application with proof that the facility will comply with the provisions of the Act and any other regulations. Our concept of justice and fair play requires this procedure. If the Board were to accept Respondent's position, any future judicial ruling holding a regulation invalid would result in a de facto issuance of permits to parties who had not challenged an Agency permit denial. This result will not be permitted and a resubmission of a permit application will be required to ensure compliance with the Act and any applicable Regulations.

In situations of this nature, it seems fair and equitable for all parties concerned to allow for a resubmission of a permit application for Agency consideration hereof. The Board would be willing to entertain a motion of Respondent staying these proceedings pending such a permit reconsideration.

In view of the foregoing, Respondent's Motion for Reconsideration and Alternative Motion are denied.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Order was adopted on the 8th day of April, 1976 by a vote of 5-0.


Christan L. Moffett, Clerk
Illinois Pollution Control Board