

ILLINOIS POLLUTION CONTROL BOARD
November 29, 1988

TROJAN CORPORATION,)
a Delaware Corporation,)
)
Petitioner,)
)
v.) PCB 88-136
)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

ORDER OF THE BOARD (by J. Marlin):

On November 7, 1988, Trojan Corporation (Trojan) filed a motion to consolidate the proceeding with the proceeding docketed as PCB 88-68. The Illinois Environmental Protection Agency (Agency) filed no response to this motion,

In PCB 88-68, Trojan filed a petition to appeal a March 7, 1988 denial by the Agency of a closure plan modification requested by Trojan. That matter concerns Trojan's Wolf Lake facility. Trojan asserts that its closure modification request sought a determination from the Agency that the Resource Conservation and Recovery Act (RCRA) did not apply to eight ponds (Ponds A, B, C, D, E, F, G and H) operated by Trojan. Trojan claims that those ponds do not contain hazardous waste materials. (PCB 88-68, Pet., p. 2-3). The Agency does not agree with Trojan that these ponds are not RCRA surface impoundment units.

In this matter, Trojan filed a petition for review of a July 22, 1988 denial by the Agency of a permit requested to allow the land application of waste found in Trojan's ponds (Ponds A, B, C, D, E, F, G, H, I, J, K, L, M, and N). In the July 22, 1983 letter, from the Division of Water Pollution, the Agency states that the Division of Land Pollution has already determined that Ponds A, B, C, D, E, F, G, and H are hazardous waste units. The letter goes on to state that the Division of Water Pollution "will not issue a permit for land application of the liquid from these ponds if the liquid is a hazardous waste." In addition, the Agency cites a number of the concerns dealing with Ponds I, J, K, L, M, and N. (Pet., Attach. C.)

Trojan claims that the instant case should be consolidated with PCB 88-68 because the cases involve: Activities at the same facility; substantially the same documents (and witnesses); and the same determinations of waste types and closure methods.


While some of the issues in this proceeding involve determinations of the Agency which were made in the Agency's disposition of Trojan's closure modification request (now issues in PCB 88-68), not all of the Agency's concerns regarding the land application request (specifically, matters dealing with Ponds I, J, K, L, M, and N) are involved in PCB 88-68.

The Board must review Agency permit decisions by evaluating the decision with respect to the record that was before the Agency and that which is generated by the Board's own hearing. The record filed by the Agency in PCB 88-68 is substantially different from the record filed in this proceeding. It is essential that these records be kept distinct and that the Agency's decisions are evaluated against their respective records.

The Board notes that a hearing in this matter and one in PCB 88-68 has been scheduled for May 1, 1989. In addition, both cases will be heard by the same Hearing Officer. This will facilitate the presentation of Trojan's cases and resolve any possible scheduling conflicts. However, the Board will not consolidate this proceeding with PCB 88-68. Trojan's motion is denied.

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 29th day of November, 1988 by a vote of 7-0.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board