

ILLINOIS POLLUTION CONTROL BOARD
April 23, 1992

CWM CHEMICAL SERVICES, INC.,)	
)	
Petitioner,)	
)	
v.)	PCB 89-177
)	(Permit Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY and)	
PEOPLE OF THE STATE)	
OF ILLINOIS,)	
)	
Respondents.)	

ORDER OF THE BOARD (by J. Theodore Meyer):

This matter is before the Board on CWM Chemical Services's (CWM) March 23, 1992 motion to stay proceedings. After an extension of time to respond to the motion was granted by the hearing officer, the Attorney General, on behalf of the Illinois Environmental Protection Agency (Agency) and the People of the State of Illinois (collectively, the Attorney General) filed its response on April 13, 1992. On April 16, 1992, amicus curiae the 35th District Environmental Task Force (Task Force) filed its response, with a motion for leave to file the response instanter. The Task Force states that the April 13, 1992 flood of the Chicago River into the underground system of downtown Chicago forced the evacuation of the offices of its attorneys, and that its attorneys could not return to their offices until April 16, 1992. The motion to file instanter is granted.

This case involves CWM's appeal of the Agency's September 1989 denial of CWM's requested RCRA Part B permit for CWM's Chicago incinerator. CWM now seeks a stay of the hearings in this matter, pending an Agency decision on a new RCRA Part B permit application filed by CWM in November 1991. CWM contends that most of the Agency's 96 reasons for denying the 1989 permit have been mooted by changed circumstances or new operating procedures used at the incinerator. Although it maintains that many issues are moot, CWM admits that the facility's need to maintain RCRA interim status "effectively precludes an agreed resolution of this appeal on any basis that would have the effect of affirming the propriety of any part of [the Agency's] 1989 permit denial." (Motion at 3.) Thus, CWM asks that hearings be stayed, on the basis of its stipulation not to operate the incinerator unless and until a Part B permit is issued by the Agency. CWM asserts that cessation of operation is all that the Attorney General or the Task Force can expect from the conclusion of this proceeding, that the Board will not have to devote any

further resources to this matter, that the parties will no longer be locked in adversarial proceedings, and that the parties' resources can then be more efficiently applied to the 1991 Part B permit application review process.

In response, the Attorney General states that it has two options: to support the motion to stay, or to commit to a minimum of an additional six months of effort and resources to bring this appeal to a close. Given these options, the Attorney General believes that it has only one "reasonable" choice: "to support the stay, but, in doing so, to require an irrevocable commitment made by [CWM] which is subject to specific performance." (Response at 3.) Attached to the response is a stipulation, in which CWM agrees, among other things, to cease all operations at the Chicago incinerator, to bring no additional waste material of any kind to the facility, to remove existing on-site waste, to dismiss this appeal when the "final administrative decision" is made on the 1991 Part B application, and to dismiss this appeal if, at any time prior to issuance of a final RCRA Part B operating permit, there is any operation of the incinerator or storage of waste at the facility. (Response, Exh. A.)¹ The Attorney General states that its support of the requested stay is expressly conditioned on CWM's agreement to and the Board's approval of the stipulation. If there is any breach of the stipulation, the Attorney General intends to enforce the stipulation in circuit court.

The Task Force also filed a response to the motion to stay. The Task Force opposes the stay, contending that the motion is the latest in a series of attempts by CWM to prevent the Board from ruling on the merits of this 2 1/2 year old appeal, thus endangering CWM's interim status.² The Task Force notes that the hearings in this proceeding have indeed required a considerable investment of resources, but maintains that CWM has only itself to blame. The Task Force argues that CWM's examination of witnesses has been lengthy and redundant, and its several motions have unnecessarily burdened the Board and the parties. The Task Force also expresses concern that, should hearings in this case have to resume at some point in the future, the Agency's case could be severely prejudiced by the possible unavailability of witnesses. Thus, the Task Force opposes the requested stay. If the stay is granted, however, the Task Force suggests that the parties be required to submit regular status

¹ The Attorney General filed a fully executed copy of the stipulation, signed by representatives of CWM, the Agency, and the Attorney General, on April 20, 1992.

² The Task Force believes that CWM's interim status terminated when the Agency denied its first Part B application in September 1989.

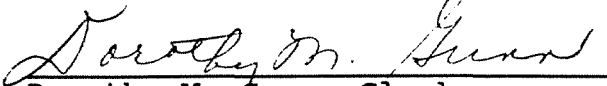
reports so that the Board can maintain some control over the proceeding and reinstate the hearings if circumstances warrant it.

After consideration of the arguments of the parties and the amicus, and of the history of this proceeding, the Board reluctantly grants the requested stay of hearings. This proceeding is 2 1/2 years old, and many of the resources needed for the conduct of the appeal, about which CWM seems to be so concerned, have already been expended. However, the Board agrees with the Attorney General that a final Board decision on this appeal could take another six months. The stipulation that CWM will not operate its Chicago incinerator, and will not store waste at the facility, will ensure that no further operation of the facility occurs until a RCRA Part B permit is obtained. As the Task Force states in its response, it entered this case because of its concerns about "the consequences of a hazardous waste incinerator operating in its members' neighborhood not only without a permit (reason enough for concern), but long after its permit was denied." (Task Force response at 1-2.) By granting the requested stay, on the basis of the stipulation that no further operation will occur at the facility, the Board is able address those concerns. The facility simply will not operate without a Part B permit.

The Board stresses that its grant of the stay is based solely on the stipulation, which is hereby incorporated by reference. In addition to requiring that CWM conform with all aspects of the stipulation, the Board orders CWM to file status reports with the Board every 90 days. The status reports shall summarize the activity on the 1991 application. Failure to file these reports, or any indication that there is intentional delay in the review process, will result in further Board action on this case.

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 23rd day of April, 1992, by a vote of 7-0.


 Dorothy M. Gunn, Clerk
 Illinois Pollution Control Board