

ILLINOIS POLLUTION CONTROL BOARD  
October 1, 1992

AMERICAN WASTE PROCESSING, LTD., )  
 )  
 Petitioner, )  
 )  
 v. ) PCB 91-38  
 ) (Permit Appeal)  
 ILLINOIS ENVIRONMENTAL )  
 PROTECTION AGENCY. )  
 )  
 Respondent. )

ORDER OF THE BOARD (by B. Forcade):

This matter comes before the Board on a motion to supplement the record. The motion was filed on August 25, 1992, by American Waste Processing, Ltd (American). American seeks to supplement the record submitted by the Illinois Environmental Protection Agency (Agency). The Agency filed its response to the motion on September 3, 1992.

American seeks to supplement the Agency record with three document filings that were submitted to the Agency after the letter of denial was issued to American. One document was submitted to the Agency on October 14, 1991, and the other two documents were filed with the Agency on August 17, 1992. The permit denial letter to American was issued on January 25, 1991. The documents were submitted in an attempt to resolve the issues that the Agency finds objectionable. American also seeks to supplement the record with "internal working documents" of the Agency.

The Agency in its response notes that American's motion is contrary to Illinois law. The Agency states that the material that American seeks to add to the record was not considered by the Agency. The Agency states that the law is clear that the Board's review of the Agency's permitting decision must be based exclusively on the documentation before the Agency when the permitting decision was made. The Agency does not agree to supplement the record and opposes American's motion.

It is well-settled that the Agency record in a permit appeal consists only of the information which the Agency considered or should have considered in making its permitting decision. (Alton Packaging Corp. v. Pollution Control Board (5th Dist. 1987), 162 Ill.App.3d 731, 516 N.E.2d 275; Joliet Sand & Gravel v. Pollution Control Board (3d Dist. 1987), 163 Ill.App.3d 830, 516 N.E.2d 955.) The Board has denied motions to supplement the Agency record with information that the Agency did not or should have not considered. (CWM Chemical Services, Inc. v. IEPA (July 11, 1991), PCB 89-177.) In denying motions to supplement the

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record the Board has limited the record to those documents in the possession of the Agency at the time it rendered its decision. (Indian Refining Limited Partnership v. IEPA (July 11, 1991), PCB 91-84, see also Testor Corporation v. IEPA (November 2, 1989), PCB 88-191.)

~~The three supplemental document filings that American seeks to add to the Agency record were submitted to the Agency after the denial of the permit. The documents were not before the Agency at the time the permitting decision was made in January of 1991. From the dates on the documents it is evident that the documents, as submitted, did not exist at the time the Agency made the permitting decision. The Agency states that it did not rely on these documents in reaching its determination that the permit should be denied. Therefore, the documents should not be included in the Agency record or considered by the Board in this permit appeal.~~

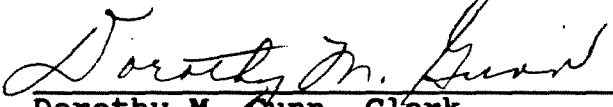
American describes "internal working documents" as review notes, memorandums of reviewer and superiors; Agency decision guide memorandums; U.S. Environmental Protection Agency guides and memorandums. American did not provide dates on the internal working documents. American has not shown that the internal documents were before the Agency or available at the time the permitting decision was made or considered by the Agency in reaching its permitting decision. Therefore, the internal documents will not be added to the Agency record.

If American believes that any of the documents were before the Agency or should have been considered by the Agency when the permit decision was made, American may request that these documents be added to the record by filing a new motion. Any subsequent motion to supplement the record with the internal working documents must include the dates when the internal working documents were created.

American has not shown that the Agency considered or should have considered the documents in making its permitting decision. Therefore, American's motion to supplement the Agency record 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 1st day of October, 1992, by a vote of 7-0.

  
Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board

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