

ILLINOIS POLLUTION CONTROL BOARD  
September 8, 1988

ALTON PACKAGING CORPORATION,            )  
  )  
          Petitioner,                    )  
  )  
          v.                                )           PCB 83-55  
  )  
ILLINOIS ENVIRONMENTAL                )  
PROTECTION AGENCY,                    )  
  )  
          Respondent.                    )

ORDER OF THE BOARD (by R. C. Flemal):

This matter comes before the Board upon a Motion in Limine filed August 31, 1988 by Alton Packaging Corporation ("Alton"). Alton requests that the Board limit the issues that may be presented at hearing, and that the Illinois Environmental Protection Agency ("Agency") be barred from presenting economic information. The Agency filed its response in opposition to Alton's motion on September 7, 1988.

Alton claims that the sole issue here is whether Alton has adequately demonstrated, according to the requirements of 35 Ill. Adm. Code 214.201, that sulfur dioxide emissions from the Alton Mill under the proposed adjusted standard will not cause or contribute to ambient air quality violations. Alton requests that the Agency therefore be barred from presenting any economic information as irrelevant to the proceeding. The Agency argues that it is the Board's duty to make environmental policy decisions and that exclusion of economic information would foreclose consideration of evidence necessary for such determinations.

Central to the matter at hand are two portions of the Illinois Environmental Protection Act ("Act"), Sections 28.1 and 27(a) (Ill.Rev. Stat. 1987, ch. 111 $\frac{1}{2}$ , par. 1028.1 and 1027(a)). In pertinent part Section 28.1 reads (emphasis added):

In adopting a regulation of general applicability, the Board may provide for the subsequent determination of an adjusted standard for persons who can justify such an adjustment consistent with subsection (a) of Section 27 of this Act ... The rule-making provisions of the Illinois Administrative Procedure Act and Title VII of this Act shall not apply to such subsequent determinations.

In pertinent part, Section 27(a) reads (emphasis added):

In promulgating regulations under this Act, the Board shall take into account ... the technical feasibility and economic reasonableness of measuring or reducing the particular type of pollution.

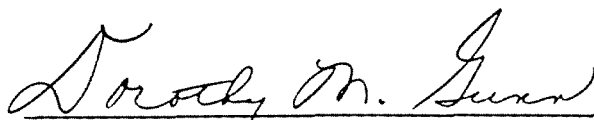
Taken together, these two sections mandate that the Board make adjusted standards determinations consistent with the economic reasonableness (among other matters) of the proposed adjustment. Therefore, the entry of economic information into the record of an adjusted standards proceeding is not only permissible, it is a prerequisite of a successful petition. Moreover, the Board notes that it is the responsibility of the person who requests the adjusted standard to assure that economic information sufficient for the Board to make its determination is entered into the record. For these reasons, the Board cannot generally bar the submission of economic information, and accordingly Alton's motion is denied.

In support of its claim, Alton emphasizes that since Section 28.1 states that the rulemaking provisions of the Illinois Administrative Procedure Act ("APA") and Title VII (of which both Sections 27 and 28 are part) do not apply, economic information, particularly regarding economic hardship, should not be considered. The Agency states and the Board agrees that Section 28.1 by its terms specifically allows adjusted standard determinations to be made without utilization of the regular rulemaking procedures contained in Title VII of the Act or those of the APA. This is not only clear from the juxtaposition of the the APA (which deals solely with procedures) and Title VII references, but also from the absurdity which would follow under the construction that nothing in Title VII applies to Section 28 considerations where Section 28 is itself part of Title VII.

In denying Alton's motion the Board notes that it is not finding that Section 28.1 authorizes a reexamination of the general rulemaking factors considered by the Board when it adopted the general sulfur dioxide standards; neither does Section 28.1 provide for a determination regarding arbitrary or unreasonable hardship necessary for variance proceedings.

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 8<sup>th</sup> day of September, 1988, by a vote of 7-0.



Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board