



10/31/86 EARTH INDUSTRIAL WASTE MANAGEMENT v.

1986 | Cited 0 times | Court of Appeals of Tennessee | October 31, 1986

BEN H. CANTRELL, JUDGE

Earth Industrial Waste Management, Inc. operates two off-site waste management facilities in the Memphis area. In 1981 in accordance with a legislative mandate, the Solid Waste Disposal Control Board adopted a rule establishing annual fees to be paid by the owners or operators of each hazardous waste facility. Earth Industrial contends that since its facilities are only "interim status" facilities and have not been issued a permit, the legislature excluded its operations from the application of the fee statute. Thus, they argue, the Board exceeded its power in requiring a fee from interim status facilities.

The storage, transportation, treatment, and disposal of hazardous wastes are regulated by the provisions of the "Tennessee Hazardous Waste Management Act", T.C.A. § 68-46-101, et seq. First enacted in 1977, the Act was amended in 1980 to require that persons engaged in the above activities must obtain a permit from the Commissioner of Public Health (for on-site disposal facilities) or the Solid Waste Disposal Control Board (for off-site facilities). The 1980 amendments also empowered the Board to adopt regulations governing the storage, transportation, treatment, or disposal of hazardous waste.

The Board adopted regulations establishing standards for the issuance of permits. To cover the facilities that were already existing and in operation as of the effective date of the regulations, the Board adopted interim operating standards to be observed until a permit could be obtained. The regulation provided:

"(3) Interim Status.

(a) Qualifying for Interim Status - Any person who owns or operates an "existing hazardous waste management facility" shall have interim status and shall be treated as having been issued a permit to the extent he or she has:

1. Complied with the requirements of subparagraphs (2)(b) and (2)(d) of this rule governing submission of Part A applications.
2. When the department determines on examination or reexamination of a Part A application that it fails to meet the standards of these rules it may notify the owner or operator that the application is deficient and that the owner or operator is therefore not entitled to interim status. The owner or



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operator will then be subject to enforcement for operating without a permit."

VIII Tenn.Adm.Comp., ch. 1200-1-11.07 (3)(a)(1), (2).

Thus, existing facilities could become "interim status" facilities merely by filing an application for a permit. They would then be treated as having been issued a permit.

On November 18, 1980, Earth Industrial filed Part A applications for both of its facilities, and attained "interim status."

In 1981, the legislature amended the Act again to require the payment of fees from certain transporters, storers, treaters and disposers. T.C.A. § 68-46-110 provides in pertinent part:

"(a) The commissioner shall levy and collect the following fees:

(1) Application fees from applicants for permits to transport, store, treat, or dispose of hazardous waste in the state;

(2) Annual maintenance fees from permitted transporters, storers, treaters, and disposers;"

The Board promulgated rules requiring the payment of annual maintenance fees by all storage facilities, whether interim status or permitted.

Earth Industrial took the position that since the legislature did not mention interim status facilities in T.C.A. § 68-46-110, the Board had no power to require the payment of a maintenance fee by such facilities. Therefore, Earth Industrial filed a petition with the Board for a declaration that the regulations purporting to subject its storage facilities to annual maintenance fees were beyond the statutory authority of the Commissioner and the Board. After a hearing, the Board held that the regulations were valid and not overbroad. Earth Industrial filed a petition to review in the Chancery Court of Davidson County where the chancellor affirmed the decision of the Board.

The sole question raised on appeal is whether the Board exceeded its authority by adopting a regulation that imposed the annual maintenance fee on interim status operators when the statute only directed the commissioner to levy and collect the fee from "permitted storers" of hazardous waste. T.C.A. § 68-46-110(2). By definition, Earth Industrial argues, an interim status operator is one that does not have a permit.

However, we think that for the purposes of the fee statute, T.C.A. § 68-46-110, Earth Industrial was a "permitted" storer of hazardous waste. We should keep in mind that interim status itself is entirely the creation of the Board. The legislature required all operators to have a permit. By adopting a regulation allowing facilities already in operation to continue to operate until they received a permit



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the Board in effect granted them a temporary permit. In the same regulation, the Board provided that such a facility "shall be treated as having been issued a permit." We do not think that means "treated as having a permit for all purposes except the payment of fees that other permit holders must pay."

It does not appear from the record that the legislature was aware that a category called interim status existed. Thus, not much significance can be given to the fact that the legislature did not include interim status facilities by name in the fee statute.

The judgment of the court below is affirmed and the cause is remanded to the Chancery Court of Davidson County for any further proceedings necessary. Tax the costs on appeal to the appellant.

HENRY F. TODD, P.J., M.S. and WILLIAM C. KOCH, JUDGE, CONCURS.

