

1           BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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4       SIERRA CLUB and JIM BENSMAN,           )  
  )  
5                       Petitioners,            )  
  )  
6               vs.                                )   No. PCB-98-43  
  )  
7       CITY OF WOOD RIVER and NORTON        )  
      ENVIRONMENTAL,                            )  
8    )  
                             Respondents.        )

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HEARING

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On Tuesday, December 2, 1997, at 1:30 p.m.

12

Wood River City Hall  
111 Wood River Avenue, Wood River, Illinois

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APPEARANCES

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The Hearing Officer: Deborah L. Feinen  
Also present: John Burds

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For Petitioner Jim Bensman: Pro se

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For Respondent City of Wood River: Hodge & Dwyer  
By: Christine G. Zeman, Attorney at Law

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For Respondent Norton Environmental:  
Schain, Firsell & Burney, Ltd.  
By: Glenn C. Sechen, Attorney at Law

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24   Reporter: Vicki G. Kasten, CSR #084-003245, RPR #1945

1       THE HEARING OFFICER: We're going to go ahead and  
2       start.

3       Good afternoon. My name is Deb Feinen, and I'm the  
4       Illinois Pollution Control Board Hearing Officer for  
5       this case. To my left is Jack Burds, who is also a  
6       hearing officer for the Pollution Control Board. He's  
7       here to observe.

8       For the record, I would note that it is one  
9       forty-five, on December 2nd, 1997, and that there are  
10      members of the public present. We're getting started a  
11      little bit late because we had been waiting in case  
12      Robert Larson showed up on behalf of the Sierra Club.  
13      He has entered an appearance, but he has not appeared  
14      yet here at the hearing.

15      The proceeding before us today is Sierra Club and Jim  
16      Bensman, versus the City of Wood River and Norton  
17      Environmental. It's PCB-98-43.

18      And there are members of the public present, so I  
19      will just briefly caution that the Illinois  
20      Environmental Protection Act, although it does allow  
21      members of the public to make a statement on the  
22      record, specifically states that no new or additional  
23      evidence in support of or in opposition to any finding,  
24      order, determination, or decision of the appropriate

1 county board or governing body shall be heard by the  
2 Pollution Control Board.

3 Basically, what that means is, no new evidence on the  
4 citing criteria can come in at hearing. You can come  
5 forward, though, and make a statement on the record, if  
6 you wish to, and we'll just kind of go issue-by-issue  
7 as to whether or not it's something that the board can  
8 allow on the record.

9 At this time, I'm going to go ahead and allow the  
10 attorneys to make appearances on the record, and if you  
11 wish to introduce anyone who's here, please feel free  
12 to do that, and also, Mr. Bensman, you can make your  
13 appearance on the record.

14 Start at either end. Doesn't matter.

15 MS. ZEMAN: Christine Zeman with Hodge and Dwyer, on  
16 behalf of the City of Wood River. With me is Joey  
17 Talbert, as well as the city clerk, Jean Bruce. And  
18 behind me are other representatives of the City of Wood  
19 River.

20 MR. BENSMAN: Jim Bensman, for myself.

21 MR. SECHEN: And Glen Sechen. I'm here on behalf of  
22 Norton Environmental.

23 THE HEARING OFFICER: Okay. Does anyone have an  
24 opening statement?

1 MR. SECHEN: Not I.

2 THE HEARING OFFICER: Okay. Everyone has waived  
3 opening statements.

4 Are there any members of the public who wish to make  
5 a statement on the record?

6 Okay. There's no one.

7 Does anyone wish to call any witnesses or put  
8 anything into the record at this time?

9 Okay. I am going to go ahead and keep the record  
10 open until two o'clock, in case any members of the  
11 public come to the hearing and wish to make a  
12 statement, or in case Mr. Larson has been delayed and  
13 he feels like he needs to make a statement on the  
14 record.

15 At two o'clock, if no one else has come, then we will  
16 consider this hearing adjourned.

17 There is already a briefing schedule in place with  
18 the final brief being due yesterday, supplemental  
19 briefs are due by December 8th, and I believe the  
20 supplemental briefs were there in case there was  
21 something that needed to be responded to from the  
22 hearing.

23 Since there has been basically no action at the  
24 hearing, I would expect that at the end of this

1     hearing, the record would be closed and ripe for a  
2     decision for the board.

3         Is there any comment to that?

4         MR. BENSMAN: I'm planning on filing a reply. You  
5     still have a couple of motions. There are still a  
6     couple of motions pending about setting the schedule  
7     for a reply.

8         MS. ZEMAN: For the record, I would agree with  
9     your ruling with respect to supplemental briefs.

10         The order of Hearing Officer Michael Wallace made  
11     clear at the time that this hearing was set, and I  
12     believe at the time the scheduling was established,  
13     that if supplemental briefs were to be filed, they  
14     would only be filed regarding the evidence on  
15     fundamental fairness at this hearing.

16         So, I would support your ruling on that and ask that  
17     any reply brief actually not be permitted.

18         THE HEARING OFFICER: For the record --

19         MR. SECHEN: May I just respond?

20         THE HEARING OFFICER: Sure.

21         MR. SECHEN: I may file a short memorandum going to  
22     the lack of evidence at the hearing.

23         THE HEARING OFFICER: Okay. For the record, I have  
24     Mr. Wallace's order in front of me, which specifically

1 states supplemental briefs will only be allowed to the  
2 extent evidence is presented on the issue of  
3 fundamental fairness.

4 And in my previous ruling in response to a request to  
5 have new scheduling of the briefs, my ruling was that  
6 the prior hearing officer order would stand. If  
7 anybody wants to file anything, assuming we don't have  
8 anyone who comes in and brings up fundamental fairness  
9 at this hearing, if anyone wants to file anything after  
10 this hearing is over, they will have to do so with a  
11 motion for leave to file with the board, and then it  
12 will be up to the board as to whether or not they want  
13 to accept additional filing. This does have a decision  
14 deadline of January 20th, so we're getting close to the  
15 board's deliberation period.

16 Okay. Let's go ahead and go off the record, unless  
17 someone comes in.

18 MR. BENSMAN: I was going to --

19 THE HEARING OFFICER: Okay. Let's go back on the  
20 record. Mr. Bensman does have a comment.

21 MR. BENSMAN: There is still a motion pending before  
22 you, and a motion pending before the board on  
23 modifications to the briefing schedule.

24 THE HEARING OFFICER: That motion was ruled on by me

1 and I did not modify the briefing schedule.

2 MR. BENSMAN: And there was a subsequent -- there was  
3 another one after that.

4 THE HEARING OFFICER: And I believe that the board  
5 just ruled on that one.

6 MR. BENSMAN: No. There's two -- I made one to you,  
7 which you have not ruled on, and Larson made one to the  
8 board, which the board has not ruled on.

9 THE HEARING OFFICER: Ms. Zeman?

10 MS. ZEMAN: I believe Larson moved for leave to file  
11 a reply brief or a response brief on December 8th, or  
12 whatever the original deadline was for the next filing.

13 MR. SECHEN: I have not seen a board order in regard  
14 to that motion.

15 THE HEARING OFFICER: Okay. It was my understanding  
16 that the board's latest ruling cleared up all  
17 outstanding issues. While we're off the record, I will  
18 look through the record, and if it has not, I will go  
19 ahead and rule on that.

20 (Off the record.)

21 THE HEARING OFFICER: Can we go back on the record.

22 There is a motion from Mr. Bensman dated November  
23 5th, '97, which asks for request for schedule  
24 modification and other relief, and discusses the

1 record.

2 The hearing officer was in error when she thought  
3 there was an error from both Ms. Zeman and Mr. Bensman  
4 stating that the matter had been cleared up, and so the  
5 hearing officer did not know that there were still  
6 pending issues in that motion. It was her  
7 understanding that the motion was no longer pending  
8 from the letter.

9 So, we do have a pending motion dated November 5th  
10 from Mr. Bensman, and we also have a motion from Sierra  
11 Club for leave to file a reply brief that is dated  
12 November 10th. Both of those motions will be decided  
13 by the hearing officer tomorrow and faxed decisions  
14 will be sent to all parties tomorrow.

15 Is there anything further?

16 Okay. Are there any members of the public who wish  
17 to speak? There have been some people who have come in  
18 and out.

19 Okay. Then at this time, it is two o'clock, Mr.  
20 Larson still has not appeared, but we are going to go  
21 ahead and adjourn the hearing. Thank you all for  
22 coming.

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1     STATE OF ILLINOIS     )  
                                   )   ss.  
2     COUNTY OF MADISON    )

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4                             COURT\_REPORTER'S\_CERTIFICATION

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6             I, VICKI G. KASTEN, Certified Shorthand Reporter  
7     and Notary Public of the State of Illinois, do hereby  
8     certify that the foregoing Hearing, was held on  
9     Tuesday, December 2, 1997.

10            I do further certify that the foregoing  
11   transcript is a true, correct, and complete record of  
12   my notes of the proceedings; that the proceedings were  
13   taken by me stenographically, and the foregoing is an  
14   accurate and correct transcription of the same.

15            I do further certify that I am not related in  
16   any way to any of the parties involved in this action  
17   and have no interest in the outcome thereof.

18            Dated December 9 1997.

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VICKI G. KASTEN  
CSR #084-003245, RPR #1945

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