

ILLINOIS POLLUTION CONTROL BOARD
May 19, 1994

ILLINOIS ENVIRONMENTAL PROTECTION)
AGENCY,)
)
Complainant,)
)
v.) PCB 83-150
) (Enforcement)
)
ARCHER DANIELS MIDLAND,)
)
Respondent.)

ORDER OF THE BOARD (by C. A. Manning):

This matter comes before the Board on a "Joint Motion for Modification" filed on April 29, 1994 by the Archer Daniels Midland Company ("ADM") pursuant to 35 Ill. Adm. Code 103.241(b)(1). ADM requests the Board to modify its June 3, 1993, order and opinion. The proceeding was originally before the Board on a complaint alleging that ADM of Decatur, Macon County, Illinois, violated Sections 12(a) and 12(f) of the Environmental Protection Act ("Act"), 415 ILCS 5/12 (1992), as well as various sections of the Board's water pollution control regulations. On August 20, 1987, the Board issued an order accepting the parties' stipulation and proposal for settlement. On March 16, 1993, the parties filed a Joint Motion for Modification of Final Order. The Board granted that motion and issued an order on June 3, 1993 modifying the August 20, 1987 order.

BACKGROUND

This matter was originally before the Board upon a seven-count complaint filed by the Illinois Environmental Protection Agency ("Agency") on October 3, 1983. The complaint alleged that ADM violated Section 12(a) and 12(f) of the Act and certain Board regulations. ADM owns and operates a facility located at 4666 Farries Parkway in Decatur, Illinois. The facility, commonly referred to as the "East Plant", consists of a soybean refinery, a corn sweetener plant, a grain milling and alcohol refinery plant, and associated buildings and transportation network. ADM's NPDES permit authorized it to discharge effluent at four discharge points. There are two discharge points into the north branch of Farries Park Creek, one discharge into Lake Decatur, and the last discharge into the south branch of Farries Park Creek.

The complaint alleged that ADM's discharged effluent was above the limitations set forth in its NPDES permit and Board

regulations, that it failed to submit Discharge Monitoring Reports, failed to notify the Agency of the exceedences, and that its discharge contained settleable solids, floating debris, visible solids, obvious color, odor and/or turbidity. The parties filed a signed Stipulation and Proposal for Settlement on August 5, 1987. The proposed settlement agreement, that was accepted by the Board, provided that ADM agreed would pay a \$10,000 civil penalty and develop and implement a compliance plan to cure the violations.

ISSUE

Pursuant to the Board's June 3, 1993 order modifying the settlement agreement ADM is currently required to place its proposed capture and treatment system into operation by July 1, 1994. ADM states that due to the unusually heavy rains during last summer and fall in the Decatur area and due to the resultant high water table, construction of the proposed system, which had commenced in August became impracticable since all major components of the system entail excavation. As a result ADM argues that it can not make the deadline of July 1, 1994. ADM states that it requested a permit modification from the Agency to reflect a completion date of October 1, 1994. The Agency appropriately takes the position that due to the Board's June 3, 1993 order it has no authority to alter the completion date of July 1, 1994 as established in the NPDES permit issued on January 25, 1994.

ADM requests that the Board modify its June 3, 1993 order by modifying Condition 2(a) of the settlement agreement which currently reads:

2. Archer Daniels Midland shall:
 - a) construct the capture and treatment system agreed to pursuant to the schedule set forth in ADM's renewed NPDES permit issued on January 25, 1993.

ADM modification would add the following language:

"or as that schedule may be extended by the Agency through issuance of an NPDES permit modification following a demonstration by ADM that an extension is justified on the basis of acts or circumstances, including adverse weather and groundwater conditions, which are beyond the control of ADM."

DISCUSSION

Prior to this modification request the parties requested an earlier modification which the Board granted. The Board generally does not allow the compliance dates in orders to be

modified by a motion. (See generally Bill Aden, et. al. v. City of Freeport, (Dec. 20, 1993), PCB 86-193; Joliet Army Ammunition Plant v. Illinois Environmental Protection Agency, (November 15, 1989), PCB 89-79; American Steel Container Company, Drum Shop v. Illinois Environmental Protection Agency, (March 28, 1991), PCB 87-91.) However, since the Board in this matter had originally allowed the parties to alter its order by a motion because the parties were still negotiating certain aspects of the agreement, we will entertain a motion to modify this order. However, the Board is required to hold a hearing in this matter pursuant to Section 31 of the Act. Thus matter is to be set for hearing.

The hearing must be scheduled and completed in a timely manner, consistent with Board practices. The Chief Hearing Officer shall assign a hearing officer to conduct hearings. The Clerk of the Board shall promptly issue appropriate directions to the assigned hearing officer consistent with this order.

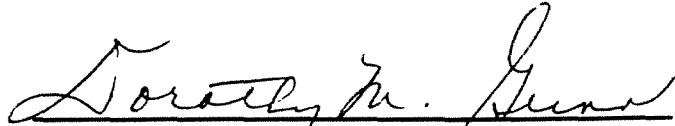
The assigned hearing officer shall inform the Clerk of the Board of the time and location of the hearing at least 40 days in advance of hearing so that public notice of hearing may be published. After hearing, the hearing officer shall submit an exhibit list, a statement regarding credibility of witnesses and all actual exhibits to the Board within five days of the hearing. Any briefing schedule shall provide for final filings as expeditiously as possible and, in time-limited cases, no later than 30 days prior to the decision due date.

If after appropriate consultation with the parties, the parties fail to provide an acceptable hearing date or if after an attempt the hearing officer is unable to consult with the parties, the hearing officer shall unilaterally set a hearing date in conformance with the schedule above. The hearing officer and the parties are encouraged to expedite this proceeding as much as possible.

IT IS SO ORDERED.

Section 41 of the Environmental Protection Act, (415 ILCS 5/41 (1992)), provides for appeal of final orders of the Board within 35 days. The Rules of the Supreme Court of Illinois establish filing requirements. (See also 35 Ill. Adm. Code 101.246, Motion for Reconsideration).

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 19th day of May, 1994, by a vote of 6-0.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board