

ILLINOIS POLLUTION CONTROL BOARD  
March 25, 1993

PEOPLE OF THE STATE )  
OF ILLINOIS, )  
 )  
Complainant, )  
 )  
v. ) PCB 91-53  
 ) (Enforcement)  
ENAMELERS AND JAPANNERS, )  
INC., an Illinois )  
corporation, )  
 )  
Respondent. )

ORDER OF THE BOARD (by J. Anderson):

This matter is before the Board on a March 15, 1993 joint motion to reconsider. Complainant the People of the State of Illinois and respondent Enamelers and Japanners, Inc. jointly ask the Board to reconsider its February 25, 1993 order dismissing this enforcement case with prejudice. Attached to the joint motion is a stipulation and proposal for settlement. The parties state that if the Board vacates its February 25 ruling, the parties are prepared to file this document with the Board for its approval. The Board grants the motion to reconsider so that we may address some of the issues raised by the parties.

The parties contend that the February 25 order dismissing this case for want of prosecution should be vacated because: 1) the parties are joint movants on this motion; 2) the Board failed to follow its own rules on continuances (35 Ill.Adm.Code 103.143); 3) the Board erred in entering the dismissal of this case with prejudice; and 4) the Board failed to follow its own rules on the amendment of complaints (35 Ill.Adm.Code 103.209).

The Board is not persuaded by the parties' arguments. We continue to believe that dismissal of an enforcement case which had nine hearings scheduled over seventeen months, at which no substantive testimony was given, is well within our authority. The parties argue that dismissal of the case is in direct conflict with the purpose of the Environmental Protection Act (Act), and suggest that a Board order setting the case for hearing would have better served the interests of justice and accomplished the purpose of making cases move with due dispatch. We fail to see how an order setting the case for hearing would have remedied the problem in this case, where nine hearings had been scheduled. The parties had not presented any substantive evidence of any kind, but continually represented that they were close to reaching a settlement. Indeed, the parties contend, in the instant motion, that their representations to the hearing officer that a settlement would be reached "should be sufficient to negate any allegation of intentional delay." (Motion at 8.)

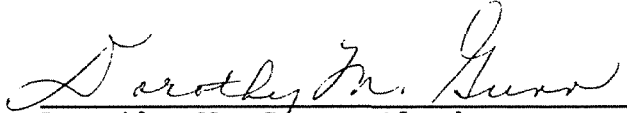
We believe that the parties have missed the point of our February 25 dismissal: that it was those continued representations that a settlement was near, with no concrete progress reflected in the record, that resulted in the dismissal.

Nevertheless, because the parties have now submitted a signed stipulation and proposal for settlement, we will grant the parties request to vacate the February 25 order, although not for the reasons given by the parties. The February 25, 1973 Board order of dismissal in this matter is hereby vacated, and the Board accepts the filing of the settlement agreement.

IT IS SO ORDERED.

J. Theodore Meyer dissented.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 25<sup>th</sup> day of March, 1993, by a vote of 5-1.

  
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Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board