

ILLINOIS POLLUTION CONTROL BOARD
February 25, 1993

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

ORDER OF THE BOARD (by J. Theodore Meyer):

This matter is before the Board on two matters. On December 28, 1992, complainant the People of the State of Illinois (People) filed a motion for leave to file second amended complaint. Subsequently, on January 5, 1993, the hearing officer issued an order denying the People's oral motion for continuance of the December 30, 1992 hearing, and recommending that the Board dismiss this matter for want of prosecution. We will first address the hearing officer's recommendation.

This case was filed by the People on March 28, 1991. Between July 9, 1991, and December 30, 1992, nine hearings were scheduled on this matter.¹ The first three of those hearings were cancelled; the next six hearings were convened, but no substantive testimony was given. At the July 20, 1992 hearing, the hearing officer stated that the parties had agreed that they would be prepared for "trial" or for a settlement on September 21. (Tr. 7/20/92 at 5.) At the September 21, 1992 hearing, the parties agreed that the matter should be continued to October 16, 1992 on a preliminary settlement. (Tr. 9/21/92 at 18-21.) That October 16, 1992 hearing was continued on the record until November 10, 1992. (Tr. 10/16/92 at 4-5.) On November 10, 1992, the hearing officer continued the hearing until December 8, 1992, but stated his concern that "this matter has been dragged on too long and if the matter is not settled by December 8, it will proceed to hearing, there will be no further continuances with the matter." (Tr. 11/10/92 at 5.) At the December 8, 1992 hearing, the hearing officer stated that the parties had advised him that they had tentatively agreed upon a stipulation and

¹ The dates of those scheduled hearings were July 9, 1991; March 19, 1992; June 9, 1992; July 20, 1992; September 21, 1992; October 16, 1992; November 10, 1992; December 8, 1992; and December 30, 1992.

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proposal for settlement, and that there were only one or two small items to be resolved. The hearing officer found that it would be in the interests of justice to grant the parties' request for a short continuance so that the stipulation could be finalized and reviewed by the parties. The hearing officer continued the hearing until December 30, 1992. (Tr. 12/8/92 at 4-7.)

At that December 30 hearing, the People stated that they were not prepared to enter a settlement agreement, indicating that the draft was still undergoing review in the Attorney General's office. The People also stated that they were not prepared to go to hearing, and suggested a continuance until January 27, 1993. (Tr. 12/30/92 at 4-5; 8.) The hearing officer, after reviewing the history of the case, denied the motion for continuance. (Tr. 12/30/92 at 7-10.) He stated that "there has been an absolute untoward delay in this case. Completely beyond belief. I have been twenty years a hearing officer and I've never had such delay in a case such as this." (Tr. 12/30/92 at 10.) The hearing officer stated that he would recommend to the Board that the matter be dismissed for want of prosecution. (Tr. 12/30/92 at 9, 13.) In response, the People asked that rather than dismissing the case, the Board enter an order giving the People twenty-four or forty-eight hours' notice to either commence hearing or dismiss for want of prosecution. (Tr. 12/30/92 at 13.)

The hearing officer entered his written order recommending dismissal for want of prosecution on January 5, 1993. He specifically found that "the procrastination in this matter is egregious and flagrant." (H.O. order at 1.) On January 7, 1993, the People filed a written motion asking the hearing officer to reconsider his recommendation. On February 11, 1993, the hearing officer denied the People's motion for reconsideration.

After carefully reviewing the record of this case, the Board accepts the hearing officer's recommendation and dismisses the case for want of prosecution. The hearing transcripts show that the parties continually represented that they were close to reaching a settlement, that they agreed to, and in some cases suggested, the date for the next hearing, and that the hearing officer warned the parties that the matter had dragged on too long. Nevertheless, the parties arrived at the December 30 hearing without a settlement agreement, and unprepared for substantive hearing. The record does not reflect any indication from either party that a settlement, while progressing, would take some substantial amount of time such that hearings should be temporarily suspended. Instead, the parties continually stated that a settlement was very close. The Board finds no legitimate explanation for the continued delay.

Additionally, we presume that when the People requested a

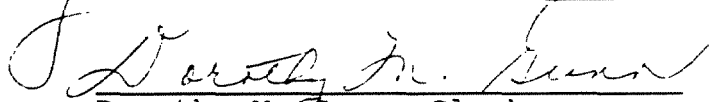
continuance until January 27, 1993, the People expected to have a settlement agreement completed at that time. It is now almost four weeks past that date, and there has been no settlement agreement submitted. We also note that although the People indicated, on December 30, that they could be ready for hearing with 24 to 48 hours' notice, they have not moved for an additional hearing, nor in any way formally contacted the Board. In sum, the People have still not indicated that the circumstances of this case have somehow improved since the hearing officer issued his order on January 5, 1993.

This case is hereby dismissed with prejudice for want of prosecution. Therefore, the People's motion to file a second amended complaint is denied. This docket is closed.

IT IS SO ORDERED.

Section 41 of the Environmental Protection Act (415 ILCS 5/41) provides for the appeal of final Board orders. The Rules of the Supreme Court of Illinois establish filing requirements. (But see also 35 Ill. Adm. Code 101.246 "Motions for Reconsideration" and Castenada v. Illinois Human Rights Commission (1989), 132 Ill.2d 304, 547 N.E.2d 437.)

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 25th day of February, 1993, by a vote of 6-0.


 Dorothy M. Gunn, Clerk
 Illinois Pollution Control Board

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