

ILLINOIS POLLUTION CONTROL BOARD
September 26, 1991

JEFFERSON SMURFIT CORPORATION,)
)
 Petitioner,)
)
 v.) PCB 88-175
) (Permit Appeal)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Respondent.)

ORDER OF THE BOARD (by B. Forcade):

On September 6, 1991, Jefferson Smurfit Corporation ("Smurfit") and the Illinois Environmental Protection Agency ("Agency") filed a Joint Motion for Agreed Order. That motion requests that the Board remand this matter back to the Agency. The motion appears to contain language which will obligate the Agency to pursue particular matters in reissuance of a permit pertaining to boron limitations, iron content of storm water, and Agency development of compliance plans. The Board will grant the remand, but will not adopt any obligations concerning the remand. To adopt such conditions would be tantamount to accepting a settlement agreement in a permit appeal without a hearing on the merits.

The Board has previously articulated its reluctance to accept settlement agreements in both permit appeals and variances. As it pertains to variances, see Rowe Foundry & Machine Company v. IEPA, PCB 81-49, 51 PCB 89; Olin Corporation v. IEPA, PCB 81-117, 45 PCB 415; Container Corporation of America v. IEPA, PCB 87-183, Interim Order, June 2, 1988; and R.R. Donnelley & Sons, v. IEPA, PCB 88-79, February 23, 1989.

As it pertains to permit appeals, the Board stated:

The Board has difficulty in dealing with settlements in permit appeal cases which involve Agency issuance of negotiated permits containing conditions for which no record exists "setting out sufficient technical facts and legal assertions to allow the Board to exercise its independent judgement and to make proper findings of fact and conclusions of law." Caterpillar Tractor Co. v. IEPA, PCB 79-180, Interim Order, June 2, 1983, p. 1-2. The Board has not issued Orders incorporating the terms of such stipulations as the Board does in enforcement cases. The Board has issued Orders dismissing the appeal

and allowing ratification of a "voidable permit, e.g., Caterpillar, supra, Final Order, June 14, 1982; an Order simply dismissing the appeal, Village of Sauget v. IEPA, PCB 79-87, July 19, 1984; and an Order remanding the permit to the Agency, Caterpillar Tractor Co. v. IEPA, PCB 83-58, March 7, 1985. (Electric Energy v. IEPA, PCB 85-14, June 13, 1985).

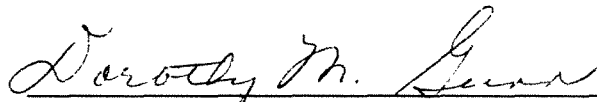
See Also, Marathon Oil Company v. IEPA, PCB 83-26, November 21, 1985; W.R. Grace and Co. v. IEPA, PCB 89-193, November 2, 1989; Motorola v. IEPA, PCB 89-193, October 25, 1990; and General Electric Company v. IEPA, PCB 90-65, September 12, 1991.

Where, as here, the parties seek to implement an Agreed Order containing both technical and legal conditions the above stated concerns are relevant. Therefore the Board will adopt a simple remand Order.

This matter is remanded to the Agency and this docket is closed.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 26th day of September, 1991, by a vote of 7-0.


 Dorothy M. Gunn, Clerk
 Illinois Pollution Control Board