

ILLINOIS POLLUTION CONTROL BOARD  
October 11, 1990

WELLS MANUFACTURING COMPANY, )  
 )  
 Petitioner, )  
 )  
 v. ) PCB 86-48  
 ) (Permit Appeal)  
 ILLINOIS ENVIRONMENTAL )  
 PROTECTION AGENCY, )  
 )  
 Respondent. )

ORDER OF THE BOARD (by R.C. Flemal):

On September 28, 1990, the Illinois Environmental Protection Agency ("Agency") responded to the Board's Order of August 30, 1990. In its Order, the Board requested that the parties provide a legal analysis of the suggested course of action in light of the Appellate Court mandate in this matter. (Wells Manufacturing Company v. IEPA, 552 N.E.2d 1074 (1st Dist., 1990). Also, the Board requested that the Agency provide clarification as to who is presently authorized to represent the Agency in the matter.

The Agency presents a letter dated September 5, 1990 in which the Agency requested that the Attorney General represent it in this matter. Although represented by both the Attorney General and the Cook County State's Attorney in the original permit appeal, and before the Appellate Court, the Agency believes that its representation in the current remand should be by the Attorney General.

The Agency letter also provides an analysis of the Appellate Court Opinion and requests that the Board remand this matter to the Agency for further action:

The Agency proposes that the Board remand the matter to the Agency for further action consistent with the opinion of the Appellate Court. The Court said that "the manner in which the Agency compiled information denied Wells a fair chance to protect its interest." The Court further rejected the Agency's assertion that the Board hearing gave Wells the opportunity to challenge the information relied upon in its permit denial. The Court said, "(t)his is by no means the same as being allowed to submit evidence, sometime during the application process (emphasis added)..." The Court then remanded "for further proceedings consistent with this opinion."

It is clear that further Board hearings will not correct the deficiency that the Court found. The

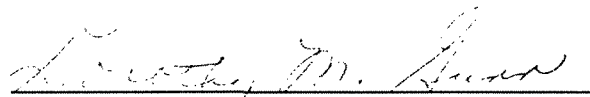
deficiency can only be corrected in the application process. So, if the matter is sent back to the Agency, it could request Wells to submit additional evidence into the permit application bearing on the air pollution issues raised earlier. The Agency could then consider all the evidence, including the new materials submitted by Wells, and make the appropriate decision.

The Agency attorney further states that the attorney for Wells Manufacturing Company ("Wells") affirms that Wells stands by the position indicated in its July 27, 1990 filing that this matter should be remanded to the Agency.

Based upon the above, the Board hereby remands this matter to the Agency for further action consistent with the First District Appellate Court Opinion.

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 11<sup>th</sup> day of October, 1990, by a vote of 6-0.

  
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Dorohty M. Gunn, Clerk  
Illinois Pollution Control Board