

ILLINOIS POLLUTION CONTROL BOARD  
July 13, 1989

VILLAGE OF SAUGET )  
 )  
 Petitioner, )  
 )  
 v. ) PCB 89-86  
 )  
 ILLINOIS ENVIRONMENTAL )  
 PROTECTION AGENCY, )  
 )  
 Respondent. )

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

This matter comes before the Board upon the June 16, 1989 motion filed by the Illinois Environmental Protection Agency ("Agency") for an additional information order or, in the alternative, for dismissal of the petition for inadequacy. On June 22, 1989 the Board denied that portion of the Agency's motion requesting dismissal of the petition for inadequacy. Therefore, only that portion of the Agency's motion requesting an additional information order is before the Board. On June 28, 1989, the Village of Sauget ("Sauget") filed its response to the Agency's motion.

The Board prefaces its discussion of the motion by noting that here, as in all variance proceedings, the burden of proof is upon the petitioner. See, Section 37(a) of the Environmental Protection Act ("Act"), and Unity Ventures v. IPCB, 132 Ill. App. 3d 421, 476 N.E.2d 1368, 1375 (2nd Dist. 1985). Therefore, if there is information which is not supplied by a petitioner which would be necessary proof of the issues in a variance proceeding, the petitioner runs the risk of denial of the requested relief. Furthermore, in a petition for extension of variance, one of the elements which the Board examines is whether satisfactory progress has been made which would include compliance with any prior Board orders granting variance. See, Section 36(b) of the Act, Moore American Graphics v. IEPA, PCB 83-241, 64 PCB 457 (6-27-85), and Stauffer Chemical Company v. IEPA, PCB 85-26, 65 PCB 37 (7-11-85).

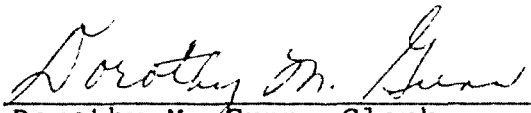
The petition is sufficient with respect to 35 Ill. Adm. Code 104.121. Therefore, the Board will not issue a more information order. The Board notes that in its reply to this motion, Sauget did present some additional information along the lines of that sought by the Agency. To the extent that the Agency seeks further information and that this information be available prior to hearing, the Agency is free to utilize other means for prehearing exchange of information, including discovery as provided in the Boards' procedural rules.

The Board does note however, a possible misinterpretation of its prior order granting variance from the color regulations. It was always the intent of the Board in granting Sauget its prior variance from the Board's color regulations, that Sauget not only determine the origin of the color by identifying the industrial contributors, but also the origin in terms of constituents which cause the color.

The Agency's motion for additional information order is denied. This denial shall not be a bar to any prehearing discovery or other orders which may require the presentation of additional information prior to hearing or to the presentation of information at hearing.

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 13<sup>th</sup> day of July, 1989, by a vote of 7-0.

  
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Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board