

ILLINOIS POLLUTION CONTROL BOARD
May 11, 1989

CONTAINER CORPORATION OF AMERICA,)
)
 Petitioner,)
)
 v.) PCB 87-183
)
 ILLINOIS ENVIRONMENTAL PROTECTION)
 AGENCY,)
)
 Respondent.)

ORDER OF THE BOARD (by J. Anderson):

This matter comes before the Board on the Amended Variance Petition filed on May 1, 1989 by Petitioner, Container Corporation of America (CCA).

The Board is uncertain of the purpose and intent of CCA in filing this amended variance petition at this stage of the proceedings in this docket. The Agency's recommendation was filed June 21, 1988. Hearing was held on December 14, 1988 and continued on the Record to April 14, 1989 at which the hearings were concluded. A record of the final (April 14, 1989) hearing was received by the Board on May 1, 1989, the same day that the Amended Variance Petition was filed. By Order of April 27, 1989, this Board at the request of the parties granted an extension of time in which to file briefs, with a responsive schedule, under which CCA's brief is due tomorrow, May 12, 1989, the responsive brief of the Illinois Environmental Protection Agency (Agency) is due May 26, 1989, and any reply brief by CCA is due no later than June 5, 1989. The Amended Variance Petition does not expressly seek to disturb the Board's Order of April 27, 1989, and the Board will not take any action to disturb its prior order today.

Ordinarily, filing of an amended variance petition would commence proceedings anew. A quick reading of the transcript of the April 14, 1989, hearing indicates that this is not CCA's intent here. Counsel for CCA stated in his opening remarks that an amended variance petition would be filed in order to reflect the fact that the testimony to be presented by CCA at that hearing "departs from our previously filed variance petition" (pp. 7-8). The amended petition reflects this intention by invoking Section 103.210(a) of the Board's procedural rules as authority for amending the petition "to conform to its proof at hearing" (p. 1).

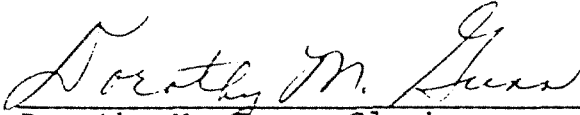
Accordingly, the Board construes this to mean that the Amended Variance request of May 1, 1989, is intended solely to clarify the exact nature of the relief sought rather than to commence variance proceedings anew. The Board will not, therefore, commence new proceedings in response to the amended petition, but will simply add the amended petition to the record of the current proceeding. The Board need not, and today does not, address what its response would be if the latter course were intended.

The Board orders the parties to advise it in writing no later than May 22, 1989, if they do not agree with the foregoing disposition of the amended petition.

IT IS SO ORDERED.

J. Dumelle and J. T. Meyer dissented.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 11th day of May, 1989, by a vote of 5-2.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board