ILLINOIS POLLUTION CONTROL BOARD October 6, 1988

MONSANTO COMPANY,)	
	Petitioner,)	
	v.	(PCB 85-19
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY and JOHN E. NORTON,)))	
	Respondents.)	

ORDER OF THE BOARD (by B. Forcade):

Monsanto Company ("Monsanto") has filed a September 30, 1988 agreed motion for a 90-day stay of Board decision. Monsanto seeks this stay to allow settlement negotiations with the Illinois Environmental Protection Agency ("Agency"). The stay is denied. The Board will proceed to schedule this matter for decision at its November 3, 1988 regularly-scheduled meeting absent some request for viable Board action.

The Board's decision to deny the requested stay is premised on its perception that the only viable outcomes are those outlined below. For the reasons articulated in Caterpillar Tractor Company v. EPA, PCB 79-180 (July 14, 1983) and Alburn, Inc. v. EPA, PCB 81-23 (March 19, 1981), the Agency now lacks the jurisdiction to alter its decision, and its underlying factual and legal conclusions, by negotiation with Monsanto. The motion for stay of decision is denied for these reasons.

The Board perceives only three viable alternative courses of action:

- Monsanto could voluntarily move to dismiss its petition;
- Norton could move to formally withdraw his information request on file with the Agency. Monsanto and the Agency could then jointly move to dismiss this action; or
- 3. The Board could proceed to render its decision.

Under the first alternative, the Agency's decision under review would become final, and the documents would then fall into the

public domain. The second alternative would result in the Agency's decision being vacated and this matter being dismissed as moot. The third alternative would result in a final opinion and order by the Board on the substance of the claims raised in this controversy.

Notwithstanding the above articulated basis for denial, the Board wishes to supplement its Opinion with an aside note on the peculiar timing of the Monsanto motion. This matter was publicly listed for discussion at the September 8 and September 22, 1988 Board meetings. The case was ready for a final vote on October 6, 1988. Monsanto filed its motion for stay on September 30, 1988.

The Board believes that motions submitted in adjudicatory proceedings are inappropriate subsequent to the Board's public discussion of the articulated probable outcomes of a matter under review. The Board believes that public discussion of the merits of proceedings serves a valuable function in an open government. The Board frequently furthers that goal by extended and detailed debate of the facts, the law, and possible outcomes. The Board finds such discussions useful, but it feels that they should not become an opportunity for parties to forestall or challenge a probable outcome as soon as it is reasonably apparent, but prior to a Board vote. For that reason, the Board must discourage motions subsequent to the public discussion of adjudicatory matters.

IT IS SO ORDERED

Chairman J.D. Dumelle concurred.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the $\frac{1}{7-0}$ day of $\frac{1988}{1988}$, by a vote of $\frac{1}{7-0}$.

Dorothy M. Gunn, Clerk

Illinois Pollution Control Board