## ILLINOIS POLLUTION CONTROL BOARD September 22, 1988

VILLAGE OF SAUGET,		)	
		)	
	Petitioner,	)	
		)	
	ν.	)	PCB 86-57
		)	PCB 86-62
ILLINOIS ENVIRONMENTAL		)	(Consolidated)
PROTECTION AGENCY,		)	
		)	
	Respondent.	)	

MONSANTO COMPANY,		)	
	Petitioner,	)	
	ν.	)	PCB 86-58 PCB 86-63
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,		) }	(Consolidated)
	Respondent.	)	

ORDER OF THE BOARD (by B. Forcade):

The Illinois Environmental Protection Agency ("Agency"), by its September 14, 1988 Motion to Reverse Ruling of Hearing Officer, has requested an additional hearing to present additional testimony and exhibits. Although responses to this motion are not yet due, the Board will act on the Agency's motion at this time since delay could jeopardize the decision due date of December 1, 1988.

At the August 4, 1988 hearing in this matter, the Hearing Officer properly excluded testimony and exhibits proffered at least in large part to show what was known and thought by the U.S. Environmental Protection Agency ("USEPA") at the time the Agency issued the permits on appeal. What information was in possession of USEPA is irrelevant. This record should exclusively comprise those facts in possession of the Agency on or before the date it issued the disputed permit, and it is exclusively on such a record that the Board desires to base its ultimate decision. <u>See Waste Management, Inc. v. EPA</u>, No. PCB 84-45, 84-61 & 84-68 (consolidated), 61 PCB 301, 307-08 (Nov. 26, 1984); <u>County of LaSalle ex. rel. Peterlin v. EPA</u>, No. PCB 81-10, 45 PCB 451, 457 (Mar. 4, 1982). However, the Agency's offer of proof does include some facts which may have been available to the Agency at the time of permit evaluation. This includes both documentary evidence -- e.g., studies compiled by Illinois agencies for presentation to the Agency, Monsanto or Sauget, submittals to USEPA which may have forwarded also to the Agency, etc. -- and testimonial evidence of information conveyed by USEPA to the Agency during their discussions concerning the Agency adoption of the February 14, 1988 USEPA recommendations.

The Hearing Officer shall promptly notice and conduct an additional hearing in this matter for the Agency presentation and petitioners' rebuttal of additional evidence and exhibits relevant to documentary and unwritten facts available to the Agency and in its possession prior to the issuance of the disputed permits. The conduct of the hearing and the subsequent briefing schedule shall accommodate the current December 1, 1988 due date for a Board decision.

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  $\frac{272}{7-0}$  day of <u>Jestender</u>, 1988, by a vote of  $\frac{7-0}{7-0}$ .

Dorothy M. Gunn, Clerk Illinois Pollution Control Board