

ILLINOIS POLLUTION CONTROL BOARD
November 25, 1987

USI CHEMICAL,)
)
 Petitioner,)
)
 v.) PCB 87-149
)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Respondent.)

ORDER OF THE BOARD (by J.D. Dumelle):

This matter comes before the Board upon Illinois Environmental Protection Agency's November 9, 1987 Motion To Dismiss Petitioner's Permit Appeal And Petitioner's Response filed November 16, 1987.

The Agency asserts that Petitioner's permit appeal should be dismissed because the statutory period for attacking the regulation is past. Petitioner has responded by stating regulations may be challenged in a permit appeal action. Celotex Corp. v. IPCB 94 Ill. 2d 107, 445 NE2d 752 (1983). The issue appears settled that a permit denial applicant may challenge a regulation as applied to that applicant. However, the extent and scope of such a hearing is not well settled.

In Village of Carey v. IPCB 403 NE2d 83 (2nd Dist., 1980) the court stated as follows:

When the validity of a regulation has been challenged, as in this case, the Board may properly consider the evidence received ... when it adopted ... the regulation ... and that evidence should be made a part of the record ... for purposes of judicial review.

Accordingly, the Board orders the parties to present arguments concerning the burdens of proof, standards of review and relevant evidence to be considered at such a hearing. The Board gives the parties until December 16, 1987 to comply with this Order.

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 25th day of November, 1987 by a vote of 6-0.

Dorothy M. Gunn
Dorothy M. Gunn, Clerk
Illinois Pollution Control Board