

ILLINOIS POLLUTION CONTROL BOARD
December 18, 1986

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
v.) PCB 85-136
)
NAVEM PATEL, ERIC OTTEN,)
CLARENCE MITCHELL AND)
J.P. JOHNSON,)
)
Respondents.)

ORDER OF THE BOARD (by B. Forcade):

On December 15, 1986, Respondent Eric Otten ("Otten") filed a motion for leave to file motion to dismiss, and motion to dismiss. The unverified motion for leave to file asserts that Otten was unfamiliar with the American legal system and believed that his connection with this proceeding was solely that of a witness. The motion asserts that this belief continued until November 29, 1986, when Otten was informed of his status as a respondent by the hearing officer, and advised to retain counsel.

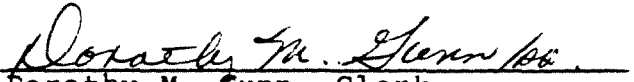
On December 18, 1986 the Illinois Environmental Protection Agency ("Agency") filed an opposition to the motion for leave to file. That opposition asserts that the motion is over one year late, that hearing has already been delayed to allow Otten to secure counsel, and that the Agency's preparation for the presently scheduled hearing on December 23, 1986 would be materially prejudiced if a response to the motion is required. The Agency also asserts material prejudice if hearing is delayed.

The Board will grant Otten's motion for leave to file but will not address the motion to dismiss until the conclusion of this proceeding. The Agency will not be required to respond to Otten's claims that the complaint fails to state a cause of action until closing briefs. Nothing in today's Order shall be construed as diminishing the parties' obligation to proceed with the December 23, 1986 hearing.

IT IS SO ORDERED.

Board Member J. Theodore Meyer dissented

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 18th day of December, 1986 by a vote of 5-1.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board