

ILLINOIS POLLUTION CONTROL BOARD
December 5, 1985

CITY OF COLUMBIA, WALTER BYERLY, JR.,)
BARBARA HEINLEIN, DANIEL HEINLEIN;)
HOMER STEMLER AND LORETTA STEMLER,)
)
Petitioners,)
)
v.) PCB 85-177
)
COUNTY OF ST. CLAIR AND BROWNING-)
FERRIS INDUSTRIES OF ILLINOIS, INC.,)
)
Respondents.)

ORDER OF THE BOARD (by J. Anderson):

On December 2, 1985 petitioners pursuant to Section 40.1 of the Act (also known as P.A. 82-682 and SB 172) filed an appeal to "preserve" an issue which they assert may be at issue: whether the County's decision must be made within 120 days or 180 days of Browning-Ferris Industries' (BFI's) filing of its application for site location suitability approval for a new regional pollution control facility to avoid the application's being "deemed approved" pursuant to Section 39.2(e). The petition was accompanied by a motion to require BFI to file an answer containing any assertion that a 120 day or a 180 decision deadline applied to this action.

The Board notes that this petition is speculative as well as factually deficient in a situation where truly "time is of the essence" e.g. BFI's application is alleged to have been filed "on or about June 26, 1985". Additionally, such facts are asserted are unsupported by affidavit or other documentation.

However, to avoid abridgment of any appeal rights which may exist, the Board will retain this matter on its docket pending factual clarification and a determination as to whether an actual timely-filed case or controversy exists of which the Board may take jurisdiction.

Petitioner cites P.A. 83-1515 as amending the 120 day decision period established in P.A. 82-682; Petitioner shall file a verification of this citation. The County shall file, in addition to any other response it may choose to make to the petition or this Order, an affidavit from its Clerk stating the date of filing of BFI's application, dates on which Section 39.2(d) public hearings have been or are being held, and whether or when the County has reached a decision in this matter. BFI shall file a response to the petition and motion to include, but not be limited to its legal position as to whether it deems its application approved pursuant to Section 39.2(e). To protect the

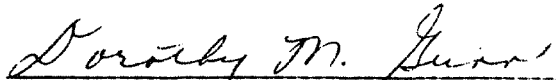
Board's ability to timely reach any necessary decision pursuant to Section 40.1(a) of the Act, these filings shall be made on or before December 16 to allow for possible resolution of this matter at the Board's December 20, 1985 meeting.

Nothing in this Order is to be construed as implying any judgment of the Board concerning the merits of these filings, or as precluding BFI, the County, or participants at any County hearings from taking further actions with respect to proceedings concerning this application.

Finally, the Clerk's Office is directed to serve the parties with copies of this Order today by first class mail, in addition to the usual certified mail.

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 5th day of December, 1985, by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board