

ILLINOIS POLLUTION CONTROL BOARD  
July 11, 1985

BRUCE JACOBSON and )  
KATHERINE JACOBSON, )  
 )  
Complainants, )  
 )  
v. ) PCB 85-30  
 )  
KATHLEEN GIENCKE, )  
 )  
Respondent. )

ORDER OF THE BOARD (by J. Anderson):

The complaint, filed March 5, 1985, alleges that respondent's use of a woodburning stove causes air pollution, with smoke from the stove entering the complainants' home. Hearing was held in this matter on June 6, 1985, at which the parties presented a proposed "consent order" for acceptance by the Board. In summary, the proposal is that, while not admitting any violation, respondent agrees to refrain from use of the stove, pending the sale of her home and subsequent relocation. The parties propose that no penalty should be assessed against the respondent.

In recent months, the Board has rejected stipulated settlements requesting the Board to impose penalties and to order compliance actions absent a Board finding of violation, e.g., IEPA v. Chemetco, Inc., PCB 83-2, February 20, 1985. Although no penalty is sought here, the Board is in essence being requested to enter a cease and desist order based on a record which lacks evidence necessary for the Board to make a finding of violation upon which a cease and desist order would be based. The Board, therefore, declines to enter the "consent order" as drafted by the parties. If the parties have resolved their differences, they may move to dismiss this action; if either party wishes to proceed, they may file a motion to schedule hearing with the hearing officer. Unless the Board receives some filing indicating an intent to proceed, within 45 days of this Order, this matter will be subject to dismissal.

Dismissal would not, of course, preclude the parties from voluntarily abiding by any agreed remedy.

IT IS SO ORDERED

J.D. Dumelle, R. Flemal, and W. Nega dissented.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 17<sup>th</sup> day of July, 1985, by a vote of 4-3.

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