

ILLINOIS POLLUTION CONTROL BOARD
October 19, 1983

CATERPILLAR TRACTOR CO.)
)
 Petitioner,)
)
 V.) PCB 83-86
)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY)
)
 Respondent.)

ORDER OF THE BOARD (by J. Theodore Meyer)

On September 28, 1983 the Illinois Environmental Protection Agency (Agency) filed a Motion to Dismiss this permit appeal. Petitioner filed a Response on October 14, 1983.

This appeal was filed July 5, 1983 contesting certain conditions of permit issued by the Agency on June 7, 1983. On June 30, 1983, prior to this appeal being filed, Petitioner formally requested the Agency by letter that the application for the operating permit issued on June 7, 1983 be reconsidered. (Ex. C of Respondent's Motion) In that letter, Petitioner also stated that an appeal of the permit may be filed. In its Motion the Agency states that pursuant to the letter the application was reopened and decision on the same is pending. The Respondent argues that this was not the intent of the letter, but rather intended to encourage agreement before the time to appeal expired.


This factual sequence is just the reverse of the sequence in Abbott Laboratories v. Illinois Environmental Protection Agency PCB 81-33. (c.f. 41 PCB 119) Therein the Agency reopened the permit application after appeal had been filed. The Board ruled that action on the reapplication by the Agency, i.e. reissuance, could not affect the existing permit appeal. In dismissing the second permit appeal filed to contest the reissued permit, the Board noted that if reopening had occurred prior to the appeal by Petitioner, there would have been no final Agency action to be reviewed by the Board.

Although Petitioner requested reconsideration, and stated an intent to appeal in the June 30, 1983 letter, the Agency was correct in accepting the formal request of reconsideration as a permit reapplication. To do otherwise could mean that the Agency fails in its statutory duty to deny or issue a permit based on the reapplication within ninety days and the disputed permit would

issue by operation of law. Since the same permit is the subject of a pending permit application and this appeal, there was no final action by the Agency on July 5, 1983 for the Board to review under Section 40 of the Act. This appeal is dismissed.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 1st day of October, 1983 by a vote of 5-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board