

ILLINOIS POLLUTION CONTROL BOARD
September 2, 1982

TROJAN CORPORATION (Wolf Lake),)	
)	
Petitioner,)	
)	
v.)	PCB 82-23
)	
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

ORDER OF THE BOARD (by D. Anderson):

On August 30, 1982 the Illinois Environmental Protection Agency (Agency) filed a motion to continue hearing and motion for expedited consideration. The dispute arises out of a letter to the Agency dated August 6, 1982 from Howard E. Hesketh, P.E., on behalf of Trojan Corporation. The letter alters Trojan Corporation's variance proposal in several respects, increasing the amount of ball powder to be burned daily, changing the location of ball powder burning, decreasing the number of buildings to be burned and increasing the total weight of buildings. The Agency asks that this be deemed an amended petition and that the September 3 hearing be postponed to give it time to review the data.

The Board notes however that this letter was not forwarded to the Board until long after it was received by the Agency. To construe it as an amendment at this time would unfairly advance the decision date. Furthermore, this exchange of information was requested by the Agency and ordered by the hearing officer on July 20, 1982. The Board therefore finds that the August 6 letter was not an amendment, but a portion of the discovery leading up to the hearing on a contested petition. The Board notes, however, that the hearing officer may restrict evidence at the hearing to the petition before the Board as previously amended.

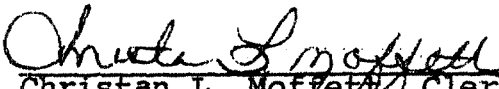
It is evident from this proceeding that the Board has created a potential procedural problem by construing a filing from a third party as an amended petition. In the future the Board will reject all such attempts to amend.

With respect to the motion for continuance, the Board notes that the Agency will have had the letter for nearly 30 days by the date of the September 3 hearing. This is the length of time which the Agency has in which to prepare a recommendation on a new petition. The time is adequate for response to discovery.

The Agency's motion for expedited consideration is granted,
and the motion for continuance is denied.

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 2nd day of September, 1982 by a vote of 5-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board