

ILLINOIS POLLUTION CONTROL BOARD
April 1, 1982

COUNTY OF LaSALLE, ex rel. GARY PETERLIN,)
STATE'S ATTORNEY OF LaSALLE COUNTY: THE)
VILLAGE OF NAPLATE, a municipal corporation;)
THE CITY OF OTTAWA, a municipal corporation;)
THE VILLAGE OF UTICA, a municipal coropration;)
OTTAWA TOWNSHIP BOARD OF TRUSTEES, ex rel.)
THE TOWN OF OTTAWA; RESIDENTS AGAINST POLLUTED)
ENVIRONMENT, an Illinois not-for-profit)
corporation; ROSEMARY SINON; MARIE MADDEN;)
and JOAN BENYA BERNABEI,)
)
Petitioners,)
)
v.) PCB 81-10
)
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY;)
WILLIAM CLARKE; PIONEER DEVELOPMENT;)
PIONEER PROCESSING, INC., and WILMER AND)
EDITH BROCKMAN,)
)
Respondents.)

ORDER OF THE BOARD (by J.D. Dumelle):

On March 17, 1982 Petitioners filed a motion for stay and on March 24, 1982 Petitioners filed what the Board construes as a motion for reconsideration of its March 19, 1982 Order in this matter. On March 31, 1982 Respondents filed a response to the motion for stay.

In justification for the stay, Petitioners in effect ask the Board to find that it is likely that the courts will overturn the Board's ruling in this matter. This the Board will not do in the absence of compelling evidence or argument. The motion for stay is hereby denied.

In the March 24 motion, Petitioners correctly point out that a Certificate of Service was filed the same day as the Motion for Admission of Exhibits, and that the Board's March 19 Order was incorrect in that regard due to a clerical error. Petitioners argue further that "it is now too late for the Board to retroactively attempt to "cure" its February 16th Order denying Petitioners Motion For Admission of Exhibits" and request simply that the incorrect statement be deleted from the March 19 Order.

The Board's error in this regard is regrettable. However, that error cannot function to change what the Board actually considered. The Board has never intended to rule upon the motions for admission of offers of proof and exhibits, for it was under the now apparent misapprehension that these motions were not properly pending before the Board due to lack of proof of service. Further, as of February 16, 1982 these motions were not ripe in that the response time has not run pursuant to Procedural Rule 308(c). The Board also notes that these motions were filed the day after the close of hearing and could not have been made any sooner, while at the same time the Board was under a statutory duty to decide this case within two business days after the motions were filed and prior to the motions having become ripe.


Given this situation, the Board grants Petitioners motion to the extent that the third paragraph of its March 19 Order is hereby deleted in its entirety.

The Board also will clarify its February 16, 1982 Order as it regards the motions for admission. For the reasons stated above, the Board did not intend its February 16 Order to deny the motions for admission. The Board did in fact consider the entire record presented to it, including all offers of proof and all exhibits offered for admission into evidence. By so acting, the Board does not mean to imply that this information was material, relevant, of probative value, and otherwise unobjectionable, but all materials filed with the Board had to be considered in that the Board had not had an opportunity to act upon the pertinent motions prior to a decision in this case. The Board did attempt, however, to delineate the scope of review in this matter in its March 4, 1982 Opinion and all information was given the weight which was deemed appropriate under those standards of review. To that extent, these motions were in effect, granted, despite their apparent denial in the February 16 Order, and no prejudice to Petitioners could, therefore, have resulted.

IT IS SO ORDERED.

D. Anderson abstained.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 15th day of April, 1982 by a vote of 3-0.


 Christan L. Moffett, Clerk
 Illinois Pollution Control Board