

ILLINOIS POLLUTION CONTROL BOARD
January 4, 1979

ENVIRONMENTAL PROTECTION AGENCY,)
)
Complainant,)
)
v.) PCB 76-248
)
ASHLAND CHEMICAL COMPANY,)
)
Respondent.)

ORDER OF THE BOARD (by Mr. Goodman):

On April 17, 1977, the Board stayed proceedings in this matter pending the decision by the Third District Appellate Court on Ashland's operating permit appeal, PCB 76-186. The Third District Appellate Court on October 20, 1978 issued its mandate reversing the permit denial and ordering issuance of the operating permit for a 120 day period.

Ashland filed a Motion to Dismiss this proceeding on December 21, 1978, and alleged two grounds for dismissal. As to Counts I and II, which allege operation of boilers without the required permits, Ashland argues that the Appellate Court decision renders these counts moot. The Board agrees. As to Counts III and IV, which allege construction and operation of a baghouse control device without the required permits, Ashland alleges that the required permits were granted by operation of law because Ashland submitted the necessary applications but received no response. Such an allegation is a defense to the Complaint and may be proved at hearing, but it is not grounds for dismissal of the Complaint. The Board hereby grants Ashland's Motion to Dismiss as to Counts I and II of the Complaint and strikes those Counts but denies the Motion as to Counts III and IV.

IT IS SO ORDERED.

I, Christan, L. Moffett, Clerk of the Illinois Pollution Control Board, hereby accept the above Order was adopted on the 4th day of January, 1979 by a vote of 4-0.


Christan L. Moffett, Clerk
Illinois Pollution Control Board