

ILLINOIS POLLUTION CONTROL BOARD
June 8, 1978

ZIMCO ENTERPRISES, DIVISION OF)
ZIMCO METALFAB, INC.,)
)
Petitioner,)
)
v.) PCB 78-104
)
ENVIRONMENTAL PROTECTION AGENCY,)
)
Respondent.)

ORDER OF THE BOARD (by Mr. Young):

On June 2, 1978, the Respondent filed a Motion to Consolidate this proceeding with PCB 77-276, EPA v. Zimco Enterprises, Division of Zimco Metalfab, Inc., and to set aside the stay in PCB 77-276 granted March 30, 1978. By Order of June 8, 1978, the Motion to Consolidate was denied.

In paragraph 2 of the Motion of June 2, 1978, Respondent states as follows:

"However, the parties have since come to the conclusion that the Agency Recommendation necessary for a full and fair treatment of the issues presented by the variance petition, which Recommendation was due on May 29, 1978, cannot adequately be prepared unless and until the parties come to further agreement concerning matters raised in the enforcement action. Specifically, the Agency cannot in good faith take a position on the proposed variance without having before it an agreement between the parties as to the facts involved in the enforcement matter; those facts are crucial to a complete presentation to the Board of the issues involved in the variance petition. The parties have separately agreed that a document encompassing those facts will be forthcoming in the next few weeks in the form of a final Stipulation of Facts preparatory to settlement of the enforcement action.

The Board can only construe such language to be a request for a stay of the variance proceeding despite the caption of the Motion.

Since no waiver of the Section 39 statutory 90-day right to decision has been filed by the Petitioner herein, no further delay will be allowed in this matter.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Order was adopted on the 8th day of June, 1978 by a vote of 5-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board