

ILLINOIS POLLUTION CONTROL BOARD
February 3, 1977

ENVIRONMENTAL PROTECTION AGENCY,)
)
 Complainant,)
)
)
)
 v.) PCB 75-486
)
)
 CITY OF HIGHLAND, a municipal)
 corporation,)
)
 Respondent.)

MR. ROBERT N. REILAND and MR. STEVEN WATTS, Assistant Attorney
Generals, appeared on behalf of Complainant;
MR. JOHN P. GEISMANN, appeared on behalf of Respondent.

OPINION AND ORDER OF THE BOARD (by Mr. Dumelle):

The Complaint in this matter was filed by the Environmental Protection Agency against the City of Highland (Highland), Madison County, Illinois on December 19, 1975. The Complaint alleges that Highland operated its electric generation station at 501 North Ninth Street in Highland without an operating permit in violation of Air Pollution Control Regulation 103(b)(2) from May 1, 1973 through the filing of the Complaint. A hearing was held on July 22, 1976 at which the parties announced that they had arrived at a proposal for settlement of this matter. On December 9, 1976 the parties submitted a Stipulation of Facts and Proposal for Settlement.

The stipulation admits the alleged violation for the purposes of settlement. It is further stated that the violation ceased on March 20, 1976. The Proposal for Settlement provides for a penalty of \$250.00 and Highland's agreement that unless it has obtained operating permits it will not operate the three coal-fired boilers under any conditions or circumstances whatsoever. The Board finds the later part of the proposal to be unacceptable.

In the context of the present case the agreement not to operate the coal-fired boilers without a permit "under any conditions or circumstances whatsoever" can only be read as including a prohibition from such use even if necessary to respond to an emergency situation. The Board will not accept such an irresponsible settlement. The Board has consistently held that a variance, and hence a permit, is not required for an electrical generating plant which is not operating but merely could be operated if a genuine emergency developed. City of Highland v. EPA, PCB 75-50, 19 PCB 470 (December 18, 1975). Such emergency operation of a source requiring a permit would properly come before the Board only upon a Complaint.

The Board will reject the proposed settlement because, in effect, it is a cease and desist order against future potential emergency operation of the coal-fired boilers in question. Such an order would be grossly irresponsible. The Board will not participate in such a premature interference with Highland's potential ability to respond to an emergency which could conceivably place human lives at stake.

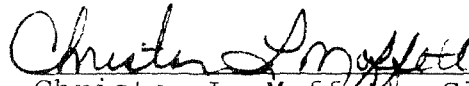
This Opinion constitutes the Board's findings of fact and conclusions of law.

ORDER

The Stipulation of Facts and Proposal for Settlement submitted on December 9, 1976 by the parties in this matter is hereby rejected. This cause is hereby remanded to the Hearing Officer for such further proceedings as may be necessary to bring this matter to a final resolution.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 3RD day of February, 1977 by a vote of 5-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board