

ILLINOIS POLLUTION CONTROL BOARD  
July 31, 1975

ENVIRONMENTAL PROTECTION AGENCY,	)	
Complainant,	)	
	)	
v.	)	PCB No. 75-232
	)	PCB No. 75-242
CITY OF SPRINGFIELD, a	)	Consolidated
municipal corporation,	)	
Respondent.	)	

INTERIM ORDER OF THE BOARD (By Mr. Zeitlin):

On July 16, 1975, Respondent City of Springfield (Springfield) filed a "Motion for Determination of a Preliminary Legal Issue", asking that the Board determine on the pleading whether Springfield's "Dallman-3" steam-electric generating unit at the Dallman Station constitutes a "New Emission Source" within the meaning of Rules 101 and 103 of Chapter 2: Air Pollution of the Pollution Control Board Rules and Regulations. The Complainant Environmental Protection Agency (Agency) filed a Response in Opposition to Springfield's Motion on July 22, 1975, and Springfield filed a further Reply to that Response on July 23, 1975.

Springfield, with its Motion, provided a group of affidavits and exhibits purporting to demonstrate the need for determination of the issue raised, and to support its position that the Dallman-3 unit must be considered an Existing Emission Source within the meaning of the above cited Rules. The Agency contends that the issue raised by Springfield is one of fact, to be determined at a hearing. Springfield's Reply states that since the City of Springfield is acting as its own general contractor, the contracts submitted as Exhibits to affidavit with its original motion show the uncontroverted facts on which the Board may decide this preliminary issue.


We find that the matters alleged by Springfield do not, however, indicate sufficiently that "there is no genuine issue as to any material fact". Ill. Rev. Stat., Ch. 110, §57. (The Civil Practice Act was cited by both parties.) We find instead that on the present state of the pleadings, we cannot find "a significant reliance interest in treating the source as an existing one." In the Matter of Emission Standards, R71-23, 4 PCB 298,301 (1972).

The following issue of fact remains for determination: whether Springfield had bound itself to a course of conduct to undertake and complete, within a reasonable time, a continuous program of construction. This statement closely parallels the language of the present definition of "Commence" in Rule 101, but makes allowance for the fact that Springfield may, in fact, be its own general contractor, (although that fact is merely alluded to in the final Reply of Petitioner Springfield).

The issue raised in Springfield's motion shall be considered with the case-in-chief.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Order was adopted on the 31<sup>st</sup> day of July, 1975 by a vote of 5-0.

  
Christan L. Moffett, Clerk  
Illinois Pollution Control Board