

ILLINOIS POLLUTION CONTROL BOARD  
May 13, 1982

LAND AND LAKES COMPANY,	)	
	)	
Petitioner,	)	
	)	
v.	)	
	)	
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,	)	PCB 81-48
	)	
Respondent,	)	
	)	
v.	)	
	)	
WHITE FENCE FARM, INC.,	)	
	)	
Intervenor.	)	

ORDER OF THE BOARD (by I. Goodman):

On March 17, 1982, Land and Lakes Company (Land and Lakes) moved to limit discovery and the scope of review at hearing in this permit denial appeal. This is not an interlocutory appeal of a hearing officer's order, but rather a motion agreed to by the hearing officer and the parties. The intervenor, White Fence Farm, Inc., responded on April 14, and the Illinois Environmental Protection Agency (Agency) responded on April 15, 1982. Land and Lakes was granted the right of reply and did so on May 10, 1982.

First, Land and Lakes seeks to bar discovery by White Fence Farms, Inc. of the Agency's file pertaining to the development permit issued on May 13, 1976, alleging that at prehearing conferences White Fence Farms, Inc. indicated intentions to introduce parts of this file into evidence. Land and Lakes argues that the file's contents are beyond the scope of this Section 40(a) review. White Fence Farms, Inc. contends that the Agency included part of this file in this proceeding's record and it is, therefore, properly a subject of discovery. If so filed, this indicates to the Board that the Agency did rely on the development permit file, at least in part, when deciding to issue the permit. Therefore, pursuant to Procedural Rule 313, this material is relevant to pending action and discovery of the same may reasonably lead to admissible evidence. White Fence Farm, Inc. is allowed discovery.

Secondly, Land and Lakes requests that the scope of hearing be defined. Specifically, it would bar White Fence Farm, Inc. from submitting into evidence information pertaining to the development permit and bar the Agency from introducing additional

information as to the permit issued. Land and Lakes asserts that the former involves matters already past review and the latter is not premised on the written record, and both are therefore beyond the scope of hearing.

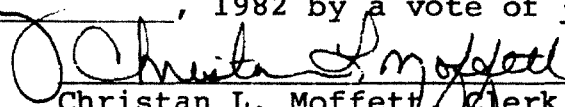
At issue in a permit denial appeal is whether the information provided by the applicant to the Agency sufficiently proves that issuing the requested permit will not cause a violation of the Act or Board Regulations. Always before, when deciding the issue of fact or law involved, the Board has limited review to the record before the Agency when its decision was made. Procedural Rule 502(a)(4) governs the contents of the record, requiring that the entire record of the application of the permit at issue be filed with the Board. At the very least, the record is to include the application, correspondence with the applicant, and the denial. In this instance, there is no denial, but instead, an experimental permit. The record is also to include any facts material and relevant to the Agency's decision, which existed at the time of decision. County of LaSalle v. IEPA, PCB 81-10, March 4, 1982.

At hearing on a Section 40(a) petition, the parties are to use the record, so defined, to forward their respective positions. The applicant must verify those parts of the record accredited to it, and must persuade the Board that the activities, if permitted, would comply with the Act or Board Regulations. The applicant may not introduce material not in the record, unless to challenge the completeness of the record as filed. Owens-Illinois, Inc. v. IEPA; PCB 77-282, February 2, 1978. The Respondent and intervenor may attempt by cross-examination or direct testimony to controvert the applicant's facts, offer proof that there was insufficient information to otherwise issue the permit, or simply attempt to persuade the Board that the facts under review support the permitting decision. Oscar Mayer v. IEPA, PCB 78-14, June 8, 1978. The Agency or the intervenor may not introduce material outside of the record as submitted to the Board. Like the applicant, they may argue that together the record, evidence at hearing, the applicable law, and Board regulations support the permit, as issued, as necessary and correct to prevent violations of the applicable law or environmental harm.

These holdings remain unchanged. Thus, the applicant may supplement the record if it argues that it is incomplete. The Agency may offer testimony material to its decision to issue the permit, as supported by the written record and the applicable law. The intervenor may do the same.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 12<sup>th</sup> day of May, 1982 by a vote of 5-0.

  
 Christan L. Moffett, Clerk  
 Illinois Pollution Control Board