

ILLINOIS POLLUTION CONTROL BOARD  
June 5, 1986

MODINE MANUFACTURING COMPANY,       )  
  )  
    Petitioner,                        )  
  )  
    vs.                                 )       PCB 83-18  
  )  
ILLINOIS ENVIRONMENTAL PROTECTION    )  
    AGENCY,                            )  
  )  
    Respondent.                        )

ORDER OF THE BOARD (by R. C. Flemal):

This matter comes before the Board upon a motion filed by the Illinois Environmental Protection Agency ("Agency") on May 28, 1986. The Agency requests that the Petitioner's Response to Second Amended Variance Recommendation be stricken or, in the alternative, that the Agency be granted leave to file a reply to Petitioner's Response.

The Agency filed its Second Amended Variance Recommendation (the final Agency Recommendation filed in this docket) on March 3, 1986. Modine Manufacturing Company ("Modine") filed its Response to Second Amended Variance Recommendation on May 20, 1986.

The Agency correctly points out that pursuant to 35 Ill. Adm. Code 104.181(a), a petitioner may file with the Board a response to any Agency recommendation within seven days after receipt of such recommendation. Modine's response was filed more than two months past the time allowed by 104.181(a). This lateness notwithstanding, the Board believes that the perspectives offered by Modine's Response in this instance outweigh any inconvenience caused by the tardiness in filing. Therefore, that portion of the Agency's motion requesting that Modine's Response to Second Amended Variance Recommendation be stricken is hereby denied.

The Board does find reasonable, however, the Agency's request that it be allowed an opportunity to answer Modine's Response. Therefore, the Board grants the Agency an opportunity to file a reply. The Agency may make such filing with the Board by June 16, 1986.

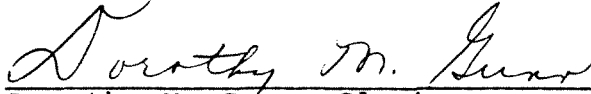
On June 14, 1986 Modine filed a motion for leave to file a response to the Agency's May 28, 1986 motion. That motion is denied. Modine has already submitted its comments on the Agency's Second Amended Variance Recommendation. The Agency was granted an opportunity to answer Modine's May 20, 1986 response only in fairness because of the extreme delay in the filing of that document. That delay has prevented the Board from rendering

a final decision in this docket, and the scheduling of an additional comment period would only further prevent the Board from reaching a final resolution in this matter.

The Clerk of the Board is directed to contact Modine and the Agency by telephone and read the content of this Order to the respective attorneys representing them in this case.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 5<sup>th</sup> day of June, 1986, by a vote of 7-0.

  
Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board