

ILLINOIS POLLUTION CONTROL BOARD

April 2, 1981

DONALD J. HAMMAN,)
)
 Petitioner,)
)
 v.) PCB 80-153
)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Respondent.)

ORDER OF THE BOARD (by D. Satchell):

On March 26, 1981 intervenor Raymond Greenberg, Highway Commissioner for Wheatland Township (Greenberg), filed a motion for continuance of the public hearing scheduled for April 3, 1981. On the same date intervenors Harry Mathers, et al., filed a similar motion for continuance. The former motion recited confusion over the issues, while the latter stated that the intervenor had hired a new attorney.

Section 40(a) of the Environmental Protection Act (Act) required the Board to render a decision on this matter within ninety days of the filing of the petition. This provision is not applicable to motions for reconsideration such as are pending before the Board. However, in adopting the ninety day rule the legislature expressed an intention that the permit applicant should have a prompt decision. Nearly ninety days have now elapsed since the Board's Opinion and Order of January 8, 1981. The intervenors have now had nearly as much time as they would have had if they had been parties from the outset. Further delay of this appeal would be inconsistent with the policy that the applicant have a prompt decision.

Greenberg's motion also raises a number of questions which the Board will answer in part. Greenberg claims that the Board's February 19 Order stated that the evidence should focus on the reasons for denial of the motion to vacate. Greenberg misconstrues the Order. The hearing should focus on the reasons for denial of the permit which were stated in the Agency's letter of denial (§39(a)(4) of the Act; Environmental Site Developers v. IEPA, PCB 80-15, June 12, 1980).

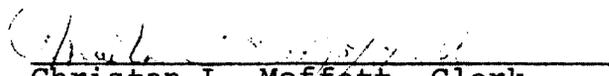
If persons seek to introduce evidence which was not before the Agency when it acted on the permit, the Hearing Officer may in his discretion allow this as an offer of proof. The proponent of the offer should explain why the evidence is not in the Agency record. Offers should be presented by question and answer. Cross-examination should be allowed, and persons may

preserve objections to the offer even if they cross-examine. The Hearing Officer should allow a reasonable time for non-parties to comment.

On March 27, 1981 Donald J. Hamman filed a motion for allocation of costs pursuant to Procedural Rule 502(a)(5). The Board will provide a court reporter and pay the cost of preparation of a stenographic transcript of the hearing to be held April 3, 1981. To this extent the motion for costs is allowed, otherwise it is denied.

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 27th day of April, 1981 by a vote of 3-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board