

ILLINOIS POLLUTION CONTROL BOARD  
December 19, 1980

SHEREX CHEMICAL COMPANY, INC.,        )  
  )  
  )        Petitioner,        )  
  )  
  )        v.                    )        PCB 80-66  
  )  
ILLINOIS ENVIRONMENTAL PROTECTION    )  
AGENCY,                                    )  
  )  
  )        Respondent.        )

SUPPLEMENTAL OPINION OF THE BOARD (by I. Goodman)

The Agency's November 6, 1980 Motion for Reconsideration of the Board's October 2, 1980 Order is granted.

I. INCOMPLETENESS OF INFORMATION

Under Rule 103(b)(4) of Chapter 2, an Agency-determined incomplete application retains its original filing date if the Agency does not notify the applicant within 30 days of the incompleteness and the reasons for the incompleteness.

If there is no statement issued under the rule, then the filing date of the application is unchanged and the Agency must proceed to determine whether the applicant has demonstrated nonviolation. If the Agency determines that there was incompleteness of information in the application, the §39(a) denial statement must specify what information was lacking.

In applying Rule 103(b)(4) and §39(a) of the Act to the facts in this matter, the Board found that to deny the permit under §39(a) for incompleteness and not a nondemonstration of nonviolation was "somewhat capricious" under these circumstances.

The Board, in reconsidering the scope of the Agency's duty under these circumstances, finds that the Agency does not have an absolute duty under Rule 103(b)(4) to inform Sherex that the application was incomplete. However, when the Agency relied on information Sherex did not formally submit--while Sherex had specifically asked for copies of such information under §7 of the Act--the Agency would have acted in better faith and afforded the maximum possible process of law had it informed Sherex of that information it had relied upon to determine nonviolation.

II. CLEAN AIR ACT ISSUES §§110 and 116

The Board did not state that approval by the USEPA is unnecessary to effectuate a SIP revision. When it spoke of a permit "intended to be submitted as a SIP revision the Board did not state that any permit intended to revise the SIP is effective as a SIP revision when issued by the Agency. The permit so issued, however, would be in full force under state law upon issuance. The Board stated that the SIP need not be revised before the permit issues if it is the permit itself which is to constitute the revision. An analogy may be made to variances which are incorporated into the SIP as revisions thereto. Such a finding is contrary to neither §110(a)(3) nor §116 of the Clean Air Act.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Supplemental Opinion was adopted on the 19<sup>th</sup> day of December 1980 by a vote of 5-0.

Christan L. Moffett *cm*  
Christan L. Moffett, Clerk  
Illinois Pollution Control Board