

ILLINOIS POLLUTION CONTROL BOARD
July 19, 1973

BENJAMIN HARRIS & COMPANY)

v.)

PCB 73-215)

ENVIRONMENTAL PROTECTION AGENCY)

PRELIMINARY ORDER OF THE BOARD (by Mr. Dumelle)

On May 23, 1973 Harris filed a petition for variance with the Board. On May 24, 1973 the Board authorized a hearing in the case. The case was assigned to a hearing officer who set the hearing for July 12, 1973. On July 10, 1973 the Agency filed its Recommendation; this was 48 days after the petition for variance was filed. On July 12, 1973, Harris filed a motion with the Board requesting that the Agency's recommendation be stricken as being untimely filed and also that the Agency be precluded from introducing any evidence at the hearing in support of any of the new matters contained in its recommendation.

Section 37 of the Act provides in part that:

"If the Board, in its discretion, concludes that a hearing would be advisable, or if the Agency or any other person filed a written objection to the grant of such variance within 21 days, then a hearing shall be held..."

We interpret that language to mean only that in order to make a hearing mandatory in a variance case, an objection must be filed within 21 days. We do not interpret it to mean that the recommendation must be stricken if filed after 21 days. In this particular case the question is moot because we have already, in our discretion, ordered a hearing on our own motion. The motion to strike will therefore be denied.


As to the petitioner's second request, we do not believe it necessary to limit the Agency's proof at the hearing. However, if the petitioner feels that they were prejudiced at the hearing because of the short amount of time between the date of the Recommendation and the date of the hearing, we will allow petitioner the opportunity of an additional hearing if they so desire.

We will allow petitioner 10 days within which to request such hearing. If none is requested we will merely take the case under advisement and render a final decision.

IT IS SO ORDERED.

Mr. Lawton did not participate in the discussion or decision of this matter.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Preliminary Order was adopted on the 19th day of July, 1973 by a vote of 3-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board