

ILLINOIS POLLUTION CONTROL BOARD  
October 17, 1972

SOIL ENRICHMENT MATERIALS CORP. et al.     )  
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ENVIRONMENTAL PROTECTION AGENCY            )

Preliminary Order of the Board (by Mr. Currie):

We scheduled a hearing on this appeal from a permit denial. The Agency filed with us the materials that had been before it in denying the permit and asked that the hearing be cancelled since the only material the Board should consider was that which had been before the Agency. SEMCO responds that the statute and rules require a hearing. We heard oral argument on this novel question.

The statute does require a hearing (Environmental Protection Act, section 40), but the crucial question is what is the scope of the hearing. Clearly the issue is whether the Agency erred in denying the permit, not whether new material that was not before the Agency persuades the Board that a permit should be granted. To allow an applicant to bypass the Agency by presenting its case for a permit only before the Board on appeal would undermine the Agency's authority to make permit decisions in the first instance.

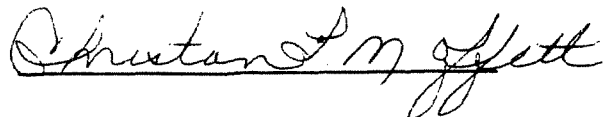
SEMCO acknowledged this on oral argument but maintains that the hearing must afford an opportunity to examine materials or persons on whom the Agency relied apart from the matter submitted by the applicant. The Agency does not dispute this but contends the appellant must first show such outside matter was relied on before a hearing is called for. We think the appellant is entitled to a hearing to determine whether or not such material was relied upon and further to explore what it discovers.

The hearing will therefore proceed. We cannot delineate in advance exactly what may be admitted at such a hearing; the Hearing Officer should bear in mind that the issue is only whether the Agency erred on the basis of what was before it.

SEMCO in oral argument raised for the first time the question whether a permit was required at all for the activity in question, asking that we decide that issue and avoid the need for a hearing. Since the Agency needs time to respond and since SEMCO maintains there is some urgency about the case, we think the most expeditious disposition is to hold the hearing now and consider this issue with the others at the close of the case.

It is so ordered.

I, Christan Moffett, Clerk of the Pollution Control Board, certify that the Board adopted the above Preliminary Order this 17th day of October, 1972, by a vote of 5-0.

A handwritten signature in cursive script that reads "Christan Moffett". The signature is written in dark ink and is positioned below the typed text of the certification.