

ILLINOIS POLLUTION CONTROL BOARD  
March 9, 1989

VILLAGE OF SAUGET, )  
 )  
 Petitioner, )  
 )  
 v. ) PCB 86-57  
 ) PCB 86-62  
 ILLINOIS ENVIRONMENTAL ) (Consolidated)  
 PROTECTION AGENCY, )  
 )  
 Respondent. )

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MONSANTO COMPANY, )  
 )  
 Petitioner, )  
 )  
 v. ) PCB 86-58  
 ) PCB 86-63  
 ILLINOIS ENVIRONMENTAL ) (Consolidated)  
 PROTECTION AGENCY, )  
 )  
 Respondent. )

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

This matter comes before the Board upon a Motion to Vacate Proposed Modified Permit filed by the Village of Sauget ("Sauget") on February 14, 1989. The Illinois Environmental Protection Agency ("Agency") filed its response on February 22, 1989. Also, the Board will first address a portion of Sauget's Motion for Reconsideration, entitled "Relief Requested", which was not disposed of by the Board in its February 23, 1989 Order on the Motion for Reconsideration.

Relief Requested

Sauget requests that the Board "clarify the status of the contested conditions from January 21, 1987 until the issuance of the modified permit." Sauget suggests that the "status of the conditions" would be clarified if the Board were to extend the stay previously granted for the AB permit which the Board declined to extend in its June 2, 1988 Order.

In the absence of action staying the effectiveness of conditions, a Board directive to modify or vacate any conditions to a permit would be effective ab initio. In this proceeding, a discretionary stay of the effectiveness of the conditions was

granted which expired January 21, 1987. The Board declined to extend that stay in an Order dated June 2, 1988. The modifications which the Board ordered on December 15, 1988 are effective on the date of expiration of the stay, which is January 21, 1987.

Sauget is essentially asking the Board to grant a discretionary stay from January 21, 1987, the time of expiration of the prior stay in this proceeding, not only until the time of final decision of the Board, but until the Agency permit as modified is no longer an appealable administrative action.

The Board believes that its June 2, 1988 Order declining to grant any additional discretionary stays in this matter was correct based on the facts before the Board at that time. The Board declines to now grant a stay retroactive to the expiration of the prior stay because the Board has now issued its final order in this matter. Therefore a stay of the conditions pending final Board determination is unnecessary. The Board believes that it has now clarified the status of the conditions as modified as being effective January 21, 1987. The Board finds no orders regarding specific conditions in addition to those already contained in its December 15, 1988 Order and its Order on Reconsideration are necessary.

The Board also declines to grant a stay of the contested conditions subsequent to the Board's final Order in this matter.

#### Motion to Vacate

Sauget asks the Board to Vacate a Modified Permit which the Agency, on January 20, 1989, apparently sent to USEPA for its review. Sauget alleges that the proposed modified permit was untimely filed with USEPA due to the then pending motions for reconsideration before the Board, and is inconsistent with the Board's directives contained in its December 15, 1988 Opinion and Order.

The Agency states that before it may issue a modified permit pursuant to the Board's directives, it must secure review and approval of the permit by USEPA pursuant to the Memorandum of Agreement ("MOA") (Sauget Ex. 23.). The MOA states in part:

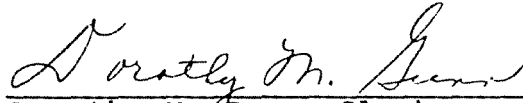
Except for those permits for which the Regional Administrator has waived rights of review, no NPDES permit will be issued by the State until it receives a letter from the Regional Administrator approving such issuance or no comment is received by the State from USEPA within 90 days of receipt of the proposed permit by USEPA.

(MOA at 6.)

The Board declines to comment on the timeliness of the Agency's submittals to USEPA. However the Agency chooses to communicate with USEPA in fulfilling its obligations under the MOA regarding submittal of a proposed modified permit is outside the jurisdiction of the Board. On the issue of the consistency of the proposed modified permit, the Board finds that, under Section 40 of the Environmental Protection Act ("Act"), it only has jurisdiction to review permits with conditions issued by the Agency to the applicant, not proposed modified permits sent to USEPA for USEPA review. The Motion to Vacate Proposed Modified Permit is denied.

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 9<sup>th</sup> day of March, 1989, by a vote of 7-0.



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Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board