

ILLINOIS POLLUTION CONTROL BOARD
May 24, 1990

CARGILL, INC.)
)
) Petitioner,)
))
) v.) PCB 87-89
) (Permit-Appeal)
)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY and VILLAGE)
 OF CARPENTERSVILLE,)
)
) Respondents.)

ORDER OF THE BOARD (by J. Marlin):

On December 27, 1987, the Board issued its Opinion and Order in this appeal of a permit issued May 20, 1987. Among other issues in the case was whether the Agency correctly imposed a condition requiring the stack on Cargill's liquid waste incinerator to be raised to 100 feet, and whether the permit condition preempted a zoning ordinance of the Village of Carpentersville which would limit the stack height to 35 feet. The Board did not reach the first issue. The Board found that the permit condition preempted the ordinance's 35 foot height restriction. The Board went on to state:

"Cargill's position is that if the Board finds for Cargill on the issue of preemption, it has no objection to the 100 foot stack requirement. Since the Board has found that the Agency's permit condition preempts the effect of Carpentersville's ordinance restricting the stack height to 35 feet, the Board need not look at the question of whether the 100 foot stack height is indeed necessary for the operation of the incinerator to be in compliance with the Act and its regulations".
Cargill, Inc. v. IEPA and Village of Carpentersville,
PCB 87-89, 84 PCB 649, 657 (December 17, 1987).

Due to the effect of its ruling on Carpentersville's ordinance, the Board joined the Village (which had not previously appeared in the case) as a party pursuant to Section 41 of the Act 35 Ill. Adm. Code 103.121 and 103.141.

The Village appealed. The Second District Appellate Court

and the Supreme Court reversed the Board's Opinion and Order in Village of Carpentersville v. IPCB, IEPA, and Cargill, Inc., 176 Ill. App. 3d 668, 531 N.E.2d 400 (2d Dist. 1988), affd. Ill. 2d _____, _____ N.E.2d _____ (No. 68074, March 29, 1990). The Supreme Court found that the plain language of Section 39(c) "makes clear that permits issued under the Act no longer preempt local zoning ordinances". (No. 68074, slip op., p.4).

On May 9, 1990 the Second District issued its mandate remanding the matter back to the Board with instructions:

"to make a finding as to whether the 100-foot stack requirement is necessary for the operation of the incinerator to be in compliance with the Act and the regulations. 531 N.E.2d at 403".

Consistent with this remand order, the parties are directed to file a statement, to be received in the Board's Offices on or before June 15, 1990, indicating their views as to how this matter should best proceed, addressing whether they believe additional briefing or hearing is required in this matter.

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 21st day of May, 1990, by a vote of 7-0.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board