

ILLINOIS POLLUTION CONTROL BOARD  
January 6, 1994

GUNITE CORPORATION, )  
 )  
Petitioner, )  
 )  
v. ) PCB 93-121  
 ) (Permit Appeal)  
ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
 )  
Respondent. )

ORDER OF THE BOARD (by G. T. Girard):

On December 22, 1993, the Board received a motion filed by the petitioner to vacate a December 7, 1993 hearing officer order. The Agency has not responded to the motion. The hearing officer in this proceeding issued an order on December 7 cancelling hearings scheduled for December 8 and 9. The order states that the hearings were being cancelled "upon representations made by both parties that the Stipulation and Agreement has been duly satisfied and that all disputes between the parties have been resolved". The order also directs the petitioner to file a motion with the Board to dismiss this matter by December 22, 1993.

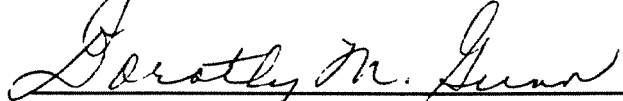
The motion to vacate argues that the order issued by the hearing officer is "tantamount to an order of dismissal and, its entry is thus beyond the scope" of the hearing officer's authority. The motion also states that the "Stipulation and Agreement entered of record in this case on September 3, 1993, has not, in fact, been duly satisfied. Nor have the disputes between the parties been resolved." (Mot. at 2.) The motion goes on to detail what issues remain between the parties.

The Board first notes that this is a permit appeal with a decision deadline of February 26, 1994. Thus, the Board must decide this case at its February 17, 1994, Board meeting, absent a waiver of the decision deadline. Given the time driven nature of this case and the representations made to the hearing officer, the hearing officer's December 7, 1993 order appears to be appropriate. However, the petitioner asserts now that the issues are not resolved. Therefore, the Board will vacate the December 7, 1993 hearing officer order.

This matter is set for hearing and a hearing must be held, absent a waiver of decision deadline, no later than February 1, 1994. This hearing will go forward on the merits of the case. Absent a waiver of decision deadline briefs will be due February 4, 1994. Failure to proceed on the merits will result in a dismissal for failure to prosecute this appeal.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, do hereby certify that the above order was adopted on the 6<sup>th</sup> day of January, 1994, by a vote of 7-0.

  
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Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board