

ILLINOIS POLLUTION CONTROL BOARD
January 5, 1989

VILLAGE OF BROCTON,)
)
 Complainant,)
)
 v.) PCB 88-133
)
 ILLINOIS CEREAL MILLS,)
)
 Respondent.)

ORDER OF THE BOARD (by J. Marlin):

On December 12, 1988, the Village of Brocton (Brocton) filed a motion to voluntarily dismiss its Complaint in this matter. Illinois Cereal Mills (ICM) filed its response to this motion on December 15, 1988. Brocton requested that its Complaint be dismissed without prejudice. Citing 35 Ill. Adm. Code 103.140(e), ICM counters that the matter should be dismissed without leave to reinstate. Specifically, ICM claims that if Brocton may later file another complaint based upon alleged violations which took place prior to the filing of the Complaint in this matter, ICM will be "prejudiced by being called upon to repeat the discovery process and again prepare to defend against the vague allegation of the complaint".

Section 103.140(e) provides:

When ruling on a motion by complainant for voluntary dismissal of an action the Board shall, for reasons stated in its Order, dismiss the action without leave to reinstate if justice so demands. Among the factors to be considered in making such a determination are evidence and arguments concerning the action's age and procedural history, and the prejudicial effects, if any, of dismissing the action with leave to reinstate.

Brocton's Complaint was filed on August 23, 1988. No hearings have yet been held in this matter. ICM seems to be concerned about having to defend itself against a vague complaint which could be filed in the future. ICM further alleges that it sent written discovery requests to Brocton which were unanswered, and that it would be prejudiced if it had to "repeat the discovery process". The Board does not believe that ICM would be prejudiced by merely filing discovery documents a second time. Moreover, should there be another complaint filed by Brocton, the answers which ICM sought through the discovery process may be clarified by the subsequent filing. As with any other complaint, a subsequent complaint filed by Brocton would have to meet the requirements of Section 103.122(c). Those requirements are intended to give the respondent adequate notice of the alleged violations in order to reasonably allow for the preparation of a defense.

The Board notes that no hearings have been held in this matter; were it otherwise, the Board would be reluctant to allow dismissal without prejudice, out of concern that a motion for dismissal might be used as a vehicle for delaying defeat upon consideration of the merits.

In this instance, the Board is not convinced that justice demands a dismissal without leave to reinstate. The Board hereby grants Brocton's motion. This matter is dismissed without prejudice.

IT IS SO ORDERED.

Section 41 of the Environmental Protection Act, Ill. Rev. Stat. 1985 ch. 111 1/2 par. 1041, provides for appeal of final Orders of the Board within 35 days. The Rules of the Supreme Court of Illinois establish filing requirements.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 5th day of January, 1989, by a vote of 7-0.

Dorothy M. Gunn
 Dorothy M. Gunn, Clerk
 Illinois Pollution Control Board