

ILLINOIS POLLUTION CONTROL BOARD

June 23, 1992

ILLINOIS CENTRAL RAILROAD, (Centralia Facility))	
)	
Petitioner,)	PCB 91-18
)	(Permit Appeal)
v.)	
)	
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,)	
)	
Respondent.)	

ORDER OF THE BOARD (J. Anderson):

This matter comes before the Board on the motion for summary judgment of Illinois Central (Illinois Central) Railroad dated June 9, 1992. Illinois Central filed its original motion for summary judgment and memorandum in support on June 4. It moved for leave to file a corrected memorandum on June 5 and a second corrected memorandum on June 9. The Agency filed its response on June 19, 1992. Illinois Central filed a reply together with a motion for leave to file on June 22, 1992. That motion represents that Illinois Central discussed the filing of a reply with the Agency, and the Agency offered no objection to the filing. Illinois Central also filed a motion to file a brief in excess of 15 pages.

The Board hereby grants the procedural motions to file. The Board grants the Illinois Central June 5 and 9 motions for leave to file instant. The Agency poses no objection to the filing of the June 22 reply by Illinois Central, so the Board grants the June 22 motion for leave to file. The Board further grants to leave to file a brief in excess of 15 pages.

This permit appeal challenges various related conditions imposed by the Agency on the NPDES permit issued for Illinois Central Railroad's Centralia facility. Those conditions would impose effluent limitations and require periodic monitoring for benzene and composite BETX (benzene, ethylbenzene, toluene, and xylene). Illinois Central represents that this facility is one of several facilities it owns in Illinois whose NPDES permits will soon require renewal.

Without rehashing the arguments posited by Illinois Central in support of its motion, it is sufficient for the purposes of this motion to characterize them. First, the arguments depend on facts not of record, and the memorandum that asserts those facts is not verified or supported by affidavit. Further, a decision in favor of summary judgment on behalf of Illinois Central would force a singularly difficult conclusion that there was no support in the Agency record for the conclusion that benzene,

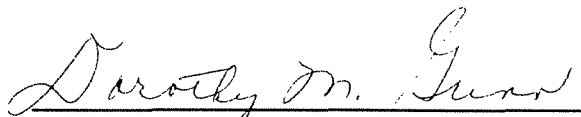
ethylbenzene, toluene, and/or xylene could be a constituent of the wastewater influent at some time or another.

Whether the Agency could reasonably suspect the presence of these constituents in the wastewater influent is a question of fact. The present record is insufficient for the Board to draw such conclusions as would justify summary judgment.

For the foregoing reasons, the Board hereby denies the Second Amended Motion for Summary Judgment filed by Illinois Central Railroad. This matter will proceed to hearing. The Board notes that a hearing is presently scheduled for July 10, 1992.

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 23rd day of June, 1992, by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board