

ILLINOIS POLLUTION CONTROL BOARD
October 6, 1988

WILMER BROCKMAN; EDITH BROCKMAN;)
WILLIAM H. CLARKE; and PIONEER)
PROCESSING, INC.,)
)
Petitioner,)
)
v.) PCB 88-158
)
)
JOAN BENYA BERNABEI; TOWN OF OTTAWA;)
PEOPLE OF THE STATE OF ILLINOIS)
EX REL, NEIL F. HARTIGAN; ILLINOIS)
ENVIRONMENTAL PROTECTION AGENCY;)
LA SALLE COUNTY; MARIE MADDEN;)
RESIDENTS AGAINST POLLUTED ENVIRONMENT;)
ROSEMARY SINON; JAMES R. VALESONE;)
and VILLAGE OF NAPLATE,)
)
Respondents.)

ORDER OF THE BOARD (by B. Forcade):

On October 4, 1988, Wilmer Brockman, Edith Brockman, William H. Clarke and Pioneer Processing, Inc. ("Petitioners") filed an appeal of permit denial and petition for declaratory ruling. The Board notes that it hereby dismisses the United States Environmental Protection Agency ("USEPA") and removes it from the caption as a respondent. The Board lacks authority over the USEPA in these matters. Village of Sauget v. IEPA, et. al., PCB 86-57, 86-58, 86-62, 86-63, June 5, 1988, [citing Aminoil U.S.A. Inc. v. California State Water Resources Control Board, 674 F.2d 1227 (9th Cir., 1982)]. This matter is accepted for hearing.

The Board orders that the parties to this proceeding file simultaneous briefs on the following issues:

1. Whether, on or about March 22, 1988, Petitioners validly withdrew any or all pending applications from the Illinois Environmental Protection Agency ("Agency") relating to the LaSalle County site?;
2. Whether the Agency had jurisdiction to issue a decision on any validly withdrawn application?;
3. Whether this Board has jurisdiction to entertain any portion of the proceeding relating to a withdrawn petition?; and

4. Whether any person other than the Agency is properly joined as a party respondent in this appeal?

All parties must file an initial brief on these issues not later than November 1, 1988. Parties may file a response brief not later than November 15, 1988

Hearing must be scheduled within 14 days of the date of this Order and completed within 60 days of the date of this Order. The hearing officer shall inform the Clerk of the Board of the time and location of the hearing as expeditiously as possible but at least 40 days in advance of hearing so that public notice of hearing may be published. After hearing, the hearing officer shall submit an exhibit list, and all actual exhibits to the Board within 5 days of the hearing. Any briefing schedule shall provide for final filings as expeditiously as possible and in no event later than 70 days from the date of this Order.

If after appropriate consultation with the parties, the parties fail to provide an acceptable hearing date or if after an attempt the hearing officer is unable to consult with the parties, the hearing officer shall unilaterally set a hearing date in conformance with the schedule above. This schedule will only provide the Board a very short time period to deliberate and reach a decision before the due date. The hearing officer and the parties are encouraged to expedite this proceeding as much as possible.

Within 10 days of accepting this case, the Hearing Officer shall enter a Hearing Officer Scheduling Order governing completion of the record. That Order shall set a date certain for each aspect of the case including: briefing schedule, hearing date(s), completion of discovery (if necessary) and pre-hearing conference (if necessary). The Hearing Officer Scheduling Order may be modified by entry of a complete new scheduling order conforming with the time requirements below.

The hearing officer may extend this schedule only on a waiver of the decision deadline by the petitioner and only for the equivalent or fewer number of days that the decision deadline is waived. Such waivers must be provided in writing to the Clerk of the Board. Any waiver must be an "open waiver" or a waiver of decision until a date certain.

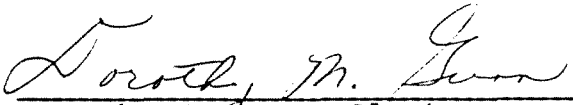
Because of requirements regarding the publication of notice of hearing, no scheduled hearing may be canceled unless the petitioner provides an open waiver or a waiver to a date at least 75 days beyond the date of the motion to cancel hearing. This should allow ample time for the Board to republish notice of hearing and receive transcripts from the hearing before the due

date. Any order by the hearing officer granting cancellation of hearing shall include a complete new scheduling order with a new hearing date at least 40 days in the future and at least 30 days prior to the new due date and the Clerk of the Board shall be promptly informed of the new schedule.

Because this proceeding is the type for which the Illinois Environmental Protection Act sets a very short statutory deadline for decisionmaking, absent a waiver, the Board will grant extensions or modifications only in unusual circumstances. Any such motion must set forth an alternative schedule for notice, hearing, and final submissions, as well as the deadline for decision, including response time to such a motion. However, no such motion shall negate the obligation of the hearing officer to establish a scheduling Order pursuant to the fourth paragraph of this Order, and to adhere to that Order until modified.

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 16th day of October, 1988, by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board