

ILLINOIS POLLUTION CONTROL BOARD  
May 7, 1992

SHEREX CHEMICAL CO., INC.        )  
                                  )  
                  Petitioner,        )  
                                  )  
                  v.                 )     PCB 91-202  
                                  )     (Permit Appeal)  
                                  )  
ILLINOIS ENVIRONMENTAL         )  
PROTECTION AGENCY,             )  
                                  )  
                  Respondent.        )

ORDER OF THE BOARD (by J. Anderson):

On April 20, 1992, the Agency filed a motion for partial summary judgment. Sherex filed its response on April 28, 1992. Each motion was supported by affidavit.

The basis for the motion is Sherex' asserted failure to timely submit written comments on the inclusion of certain provisions in its Draft RCRA permit. Section 705.212(a) of the RCRA rules provides in pertinent part that:

If the applicant failed to file comments or failed to participate in the public hearing on the draft permit he or she may petition for administrative review only to the extent of the change from the draft to the final permit decision...

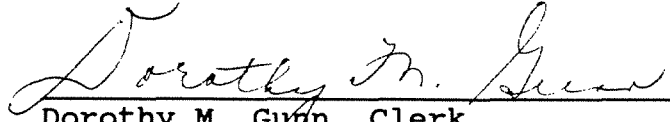
The Agency asserts that "no question of fact exists" regarding Sherex' asserted failure to comment.

In response, among other things, Sherex contests the accuracy of the Agency's statement of facts, as well as its interpretation of Section 705.212(a). Sherex contends that it was not allowed full access to the administrative record until August 28, 1991, after the August 9, 1991 date for closure of the record established by the Agency.

Summary judgment is appropriate only where there is no genuine issue of material fact. Caruthers v. B.C. Christopher & Co., 57 Ill. 2d 376, 313 N.E. 2d 457 (1974). The Board finds that the factual questions raised by Sherex are material to the Board's disposition of this case. Accordingly, the Agency's motion for partial judgment is denied.

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 7<sup>th</sup> day of May, 1992, by a vote of 7-0.

  
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Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board