

ILLINOIS POLLUTION CONTROL BOARD  
August 13, 1992

MEYER STEEL DRUM, INC., )  
 )  
 Petitioner, )  
 )  
 v. ) PCB 92-76  
 ) (Permit Appeal)  
 ILLINOIS ENVIRONMENTAL )  
 PROTECTION AGENCY, )  
 )  
 Respondent. )

ORDER OF THE BOARD (by B. Forcade):

This matter is before the Board on the July 29, 1992 motion to dismiss filed by Meyer Steel Drum, Inc. (Meyer). The motion requests that the Board dismiss this proceeding based on the settlement reached with the Illinois Environmental Protection Agency (Agency). Meyer also seeks to reserve the right to reinstate the proceeding if the Agency acts in a manner inconsistent with the settlement.

The Board has previously articulated its reluctance to accept settlement agreements in permit appeals. In General Electric v. EPA (September 12, 1991), PCB 90-65, PCB the Board stated:

The Board has difficulty in dealing with settlements in permit appeal cases which involve Agency issuance of negotiated permits containing conditions for which no record exists "setting out sufficient technical fact and legal assertions to allow the Board to exercise its independent judgement and to make proper findings of fact and conclusions of law." (citation omitted.) The Board has not issued orders incorporating the terms of such stipulations as the Board does in enforcement cases.

The Board makes no finding regarding the settlement agreement and construes this motion as a voluntary motion to dismiss. Therefore, the Board will adopt a simple voluntary dismissal order. This dismissal will not adopt the terms and conditions of the Settlement Agreement and will not allow for reinstatement of this action.

A Board order granting dismissal of a permit appeal is a final action and does not provide for reinstatement of the action. The Board will not grant a conditional dismissal under these circumstances.

If Meyer wishes another course of action, they may file a motion for reconsideration pursuant to 35 Ill. Adm. Code 101.246

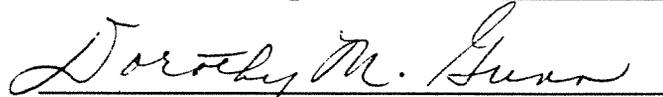
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demonstrating how that action is consistent with the concerns expressed above. This matter is hereby dismissed.

IT IS SO ORDERED.

Section 41 of the Environmental Protection Act (Ill. Rev.Stat. 1991, 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. (But see also 35 Ill. Adm. Code 101.246, "Motions for Reconsideration" and Castenada v. Illinois Human Rights Commission (1989), 132 Ill. 2d 304, 547 N.E.2d 437.)

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 13<sup>th</sup> day of August, 1992, by a vote of 7-0.

  
Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board