

ILLINOIS POLLUTION CONTROL BOARD
June 8, 1989

PEOPLE OF THE STATE OF)
ILLINOIS,)
)
Complainant,)
)
v.) PCB 89-67
)
B & W CORPORATION, an Illinois)
Corporation,)
)
Respondent.)

ORDER OF THE BOARD (by J. Marlin):

On May 25, 1989, B & W Corporation (B&W) filed a Motion to Dismiss the April 14, 1989 complaint filed by the People of the State of Illinois (People). The People filed a response on June 1, 1989. The Complaint alleges that B & W operated its paint spray booths and drying oven without a permit for approximately four years.

Essentially, B & W's motion asserts that B & W is now in compliance with the Environmental Protection Act's (Act) requirement that it have a permit for its air emissions. Evidently, B & W was issued an air permit on February 10, 1989. B & W also asserts that it has acted in good faith to comply with the Act, and that the Board is not authorized under Illinois law to issue a penalty based on the People's allegations and the fact that B & W currently has an air permit.

The People respond by stating that B & W did not act in good faith since, according to the People's allegation, it took B & W four years to submit an approvable operating permit application. The People further assert that the Board must impose a penalty to aid in the enforcement of the Act.

The Board is not convinced that it is barred as a matter of law from issuing a decision which would find B & W in violation, impose a civil penalty and/or require B & W to cease and desist from violations of the Act.

The Board notes that Section 33(a) of the Act states:

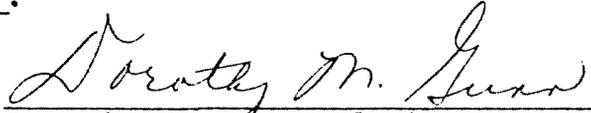
It shall not be a defense to findings of violations of the provisions of the Act or Board regulations or a bar to the assessment of civil penalties that the person has come into compliance subsequent to the violation, except where such action is barred by any applicable State or federal statute of limitation.

In issuing its orders, the Board must consider factors listed in Section 33(c) of the Act. One of those factors is "any subsequent compliance". However, such considerations are based upon factual information introduced at hearing.

B & W's motion is denied. This matter shall proceed to hearing.

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 8th day of June, 1989, by a vote of 6-0.


 Dorothy M. Gunn, Clerk.
 Illinois Pollution Control Board