

ILLINOIS POLLUTION CONTROL BOARD  
February 7, 1991

IBP, INC., )  
 )  
 Petitioner, )  
 )  
 v. ) PCB 88-98  
 ) (Permit Appeal)  
 ILLINOIS ENVIRONMENTAL )  
 PROTECTION AGENCY, )  
 )  
 Respondent. )

ORDER OF THE BOARD (by B. Forcade):

This matter comes before the Board on a motion to file instanter filed by the Illinois Environmental Protection Agency ("Agency") on January 23, 1991. Pursuant to the Board's Order of December 20, 1990, the Agency was to have filed, by January 18, 1991, a statement of what action, if any, is required to proceed with this matter consistent with the mandate of the Third District Appellate Court's opinion entered on September 21, 1990 and received by the Board on October 19, 1990. The Agency's motion to file instanter is hereby granted.

The court's modified opinion of November 30, 1990 reversed and remanded the matter to the Board with instructions to the Board to hold a de novo hearing, specifically addressing the stipulation entered by IBP, Inc. The Board denies the Agency's request that discovery and hearing be limited to the events and facts detailed in the stipulation. As the court stated in the November 30, 1990 opinion, the Board's procedures at 35 Ill. Adm. Code 105.102(b)(8) define the scope of review:

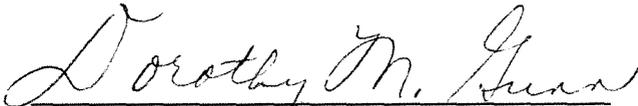
"The hearings before the Board shall extend to all questions of law and fact presented by the entire record. The Agency's findings and conclusions on questions of fact shall be prima facie true and correct. If the Agency's conclusions of the fact are disputed by the party or if issues of fact are raised in the review proceedings, the Board may make its own determination of fact based on the record. If any party desires to introduce evidence before the Board with respect to any disputed issue of fact, the Board shall conduct a de novo hearing and receive evidence with respect to such issue of fact." 35 Ill. Adm. Code sectikon 105.102(b)(8).

Particular questions on the admissibility of evidence will be ruled on at hearing by the hearing officer, consistent with the Board's procedural rules.

This matter is accepted for hearing. Due to funding shortages, the Board cannot order this matter set for hearing until July of 1991. The Hearing Officer is directed to schedule this matter for hearing as expeditiously as possible after July 1, 1991 and to finish all hearings by August 2, 1991. The hearing officer is also directed to set a briefing schedule, which allows a reasonable time after the anticipated receipt of the hearing transcripts by the parties.

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 February, 1991, by a vote of 6-0.

  
Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board