

ILLINOIS POLLUTION CONTROL BOARD  
September 12, 1991

CITY OF BRAIDWOOD, )  
 )  
 Petitioner, )  
 )  
 v. ) PCB 91-118  
 ) (Variance)  
 )  
 ILLINOIS ENVIRONMENTAL )  
 PROTECTION AGENCY, )  
 )  
 Respondent. )

ORDER OF THE BOARD (by J. C. Marlin):

On July 10, 1991, the City filed its petition for relief from the Board's restricted status rules due to its lack of compliance with the maximum allowable concentration for combined radium and gross alpha particle activity level (35 Ill. Adm. Code 602.105, 602.106 and 611.330). On July 25, the Agency moved to dismiss this case due to the pendency of an appeal of the Board's Order denying a similar variance petition in Braidwood v. IEPA, PCB 89-212, June 21, 1990. The Agency asserts that the Board has no jurisdiction to hear this petition, as all issues lie within the jurisdiction of the Third District Appellate Court.

On August 23, the City filed a response in opposition, as well as a first amended petition.

The motion to dismiss is denied. The Board notes that the Third District has reached a decision in City of Braidwood v. IEPA, No. 3-90-0788 (August 28, 1991). In that case, the Court affirmed the Board's denial of variance.

The Board notes that the filing of the August 23 amended petition restarts the timeclock for actions specified in Sections 35-38 of the Act. However, the petition fails to follow the rules for incorporation by reference found at 35 Ill. Adm. Code 101.106. (Petition, p. 2, paragraph 8). The Board will, however, allow the incorporation of the Opinion and Order in PCB 89-212 without requiring the filing of the usual 4 copies.

If an amended petition curing this deficiency is not filed within 45 days of the date of this Order, this petition will be subject to dismissal.

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 12<sup>th</sup> day of September, 1991, by a vote of 7-0.



Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board