

ILLINOIS POLLUTION CONTROL BOARD  
July 11, 1991

INDIAN REFINING LIMITED PARTNERSHIP)  
and INDIAN REFINING COMPANY, )  
 )  
Petitioner, )  
 )  
v. ) PCB 91-84  
 ) (Permit Appeal)  
ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
 )  
Respondent. )

ORDER OF THE BOARD (by M. Nardulli);

This matter comes before the Board on the Illinois Environmental Agency's (Agency) June 24, 1991 motion to exclude "Exhibit F" attached to petitioner Indian Refining Limited Partnership and Indian Refining Company's (Indian) petition for review of permit conditions. On July 1, 1991, Indian filed its response. Also before the Board is the Agency's motion to file record instanter.

The Agency's motion to file the record instanter is granted. We now address the Agency's motion to exclude "Exhibit F." "Exhibit F" is a letter dated May 2, 1991 from the Agency to Indian. The letter states that it is a response to Indian's April 19, 1991 letter requesting information documenting the technical basis for the clean-up objectives imposed as conditions by the Agency in its April 15, 1991 RCRA closure permit. The Agency moves to exclude this letter on the basis that it is beyond the scope of review because it is not part of the Agency permit record.

Initially, the Board notes that although the Agency has moved to exclude "Exhibit F" from the record, Indian has simply attached this exhibit to its petition and has not moved to supplement the Agency record. However, Indian's response to the Agency's motion indicates that it does indeed seek to include this letter in the Agency record. Indian responds that the letter should be included in the record because it merely clarifies information existing in the record. Indian cites Testor Corp. v. IEPA, PCB 88-91 (November 2, 1989) in support of its position.

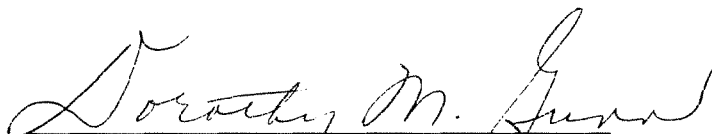
The general rule is that, in reviewing the Agency's permitting decisions, the Board only considers evidence in the Agency's possession at the time it rendered its decision. (Village of Sauget v. PCB, 566 N.E.2d 724, 729 (1990); City of East Moline v. IEPA, PCB 86-218 (September 8, 1988).) The Board has granted limited exceptions to this rule where, for example, the evidence sought to be admitted is merely a reformulation, such as the graphic admitted in Testor, of evidence already in the record.

We do not believe that an applicant may elicit information from the Agency after the permit decision has been rendered and then seek to include the Agency's response in the Agency record on appeal. The Board's ruling does not preclude other proper uses of the letter at hearing as allowed by the hearing officer. Therefore, because "Exhibit F" is outside of the Agency record, the Agency's motion to exclude "Exhibit F" from being considered as part of the Agency record in this proceeding is hereby granted.

IT IS SO ORDERED.

J. Anderson concurs.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 11<sup>th</sup> day of July, 1991, by a vote of 7-0.

  
Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board