

ILLINOIS POLLUTION CONTROL BOARD
April 27, 1989

INDIAN REFINING COMPANY AND)
OPA REFINING AND MARKETING, INC.,)
(FORMERLY TEXACO REFINING AND)
MARKETING, INC.),)
)
Petitioner,)
)
v.) PCB 88-178
)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

ORDER OF THE BOARD (by J. Anderson):

On January 19, 1989, the Board issued an Order in this proceeding in which the parties were directed to advise it by January 30, 1989, of the status of one of several volumes of the Agency record in this permit denial appeal, entitled "Exhibit J: Confidential Documents". Specifically, the Board noted its inability to determine whether this volume contains documents which were either claimed to be trade secrets pursuant to 35 Ill. Adm. Code Part 120, or claimed to be "confidential" on some other basis. The Agency's responsive statement was filed on February 3, 1989. The Agency does not request that Exhibit J be excluded from the Board's public inspection files.

Noting that the Petitioner had not filed a responsive statement, the Board on February 23, 1989, issued a second Order, requiring Petitioner to respond within 10 days (March 6, 1989).

On March 6, 1989, the firm of Feldman and Wasser filed its Entry of Appearance in this proceeding together with a Motion to Substitute Parties based upon, which motion was granted by the Board on March 9, 1989. No mention was made by OPA or by Feldman and Wasser of the Board's information request in this matter. However, in consideration of the substitution of parties and counsel, and in view of Petitioners' waiver of decision date to December 1, 1989, the Board again extended the time for the Petitioners to provide the Board the requested information, to March 20, 1989.

In spite of the foregoing repeated requests from this Board, and despite having been twice contacted personally by a Board assistant on this matter, there again was no formal response from

OPA's legal counsel on this issue. Therefore, on April 6, 1989, the Board entered an Order to the effect that, unless a formal response were received from OPA by Monday, April 17, 1989, this docket would be dismissed, and the Clerk would be directed to make appropriate arrangements for returning Exhibit J materials to Petitioner.

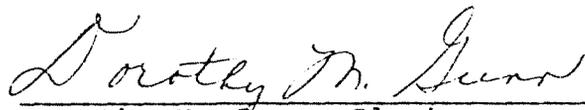
No formal or other response was received by the Board from OPA by the close of business on April 17. On April 19, 1989, the Board received from OPA's legal counsel a "Response Regarding Record", which document was, according to the Certificate of Service, mailed to the Board on April 18, 1989, one day following the most recent of the four deadlines set by the Board for response on this matter.

This Board has previously held that a pattern of disregard of Board Orders may result in the imposition of the extreme sanction of dismissal (Modine Manufacturing Corporation v. Illinois Environmental Protection Agency, PCB 87-124, November 17, 1988, Motion to Reconsider denied, March 9, 1989). Such a pattern is evident in this case. The Board and its staff have extended every opportunity to Petitioner to respond to its Orders. The Petitioner's response, when finally received, was tardy and will not be accepted. At some point, the Board must draw the line if it is to enjoy any credibility and assert any meaningful control over the conduct of matters before it. Therefore, the Board will, consistent with its Order of April 6, 1989, dismiss this docket. The clerk is directed to make appropriate arrangements for returning Exhibit J materials to Petitioner.

IT IS SO ORDERED.

J. Dumelle dissented.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 27th day of April, 1989, by a vote of 6-1.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board