

ILLINOIS POLLUTION CONTROL BOARD
April 6, 1989

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
v.) PCB 84-92
)
RICHARD KROHN and PARKWAY)
BANK & TRUST CO., as)
Trustee under Trust)
No. 4730,)
)
Respondents.)

MR. DOUGLAS J. RATHE, ASSISTANT ATTORNEY GENERAL, APPEARED ON BEHALF OF COMPLAINANT;

MS. SUSAN M. FRANZETTI, GARDEN, CARTON & DOUGLAS, APPEARED ON BEHALF OF RESPONDENT.

OPINION AND ORDER OF THE BOARD (by J.D. Dumelle):

Motion to Vacate

This matter comes before the Board upon a March 20, 1989 motion to vacate filed by the Complainant, the Illinois Environmental Protection Agency (Agency), through its attorney, Neil F. Hartigan, Attorney General of the State of Illinois.

On March 9, the Board on its own motion adopted an Order dismissing this proceeding; the Board found that this proceeding suffered from unjustifiable lack of prosecution. In support of its motion to vacate, Complainant states that the delay was the result of the Assistant Attorney General being involved in a trial on another matter and of the need to obtain the approval of the Agency with respect to the clarification of several aspects of the gas vent and trench installation at the Krohn landfill. Complainant states that a letter was sent to the Agency by the engineering firm retained by Respondent on February 7, 1989, after a telephone conference call took place involving the parties on February 3, 1989. Complainant further states that the attorneys have reached agreement on an Amended Stipulation and that as of March 20, 1989, the parties were reviewing it. Finally, Complainant alleges that the Respondent, through his attorney, has stated that he does not oppose reinstatement of this cause.

On April 3, 1989, Complainant and Respondents filed an executed copy of the Stipulation and Proposal for Settlement.

The Board hereby grants Complainant's motion to vacate. Despite the fact that complainant failed to inform the Board in a timely manner that it would be unable to comply with the Board imposed deadline, the Board is persuaded to grant the motion by Respondents' position that they do not oppose reinstatement. That there is no opposition to the motion to vacate and that the parties have submitted an executed Stipulation evidencing a desire to resolve the dispute persuades the Board that it would be in the best interests of the environment and judicial economy to grant the motion to vacate, reopen the docket, and address the Stipulation and Proposal for Settlement.

Amended Stipulation and Proposal for Settlement

On July 16, 1984, Complainant filed a six-count complaint against Respondent. On May 23, 1988, hearing was held at which the parties submitted a Stipulation and Proposal for Settlement. This Stipulation was rejected by the Board on June 16, 1988. On April 3, 1989, the parties submitted an Amended Stipulation and Proposal for Settlement curing the unacceptable provisions. The Stipulation addresses the facts and proposed terms of settlement in this matter.

The Board finds the Stipulation acceptable under 35 Ill. Adm. Code 103.180.

This Opinion constitutes the Board's finding of fact and conclusions of law in this matter.

ORDER

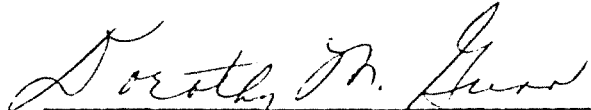
1. The Board accepts the Stipulation and Proposal for Settlement, which is hereby incorporated by reference as if fully set forth herein.
2. Respondent shall pay the sum of \$6,500 within 35 days of this Order. Such payment shall be made by certified check or money order payable to the Illinois Environmental Protection Trust Fund and submitted to:

Illinois Environmental Protection Agency
Fiscal Services Division
2200 Churchill Road
P.O. Box 19276
Springfield, IL 62794-9276

Section 41 of the Environmental Protection Act, Ill. Rev. Stat. 1987 ch. 111 1/2 par. 1041, provides for appeal of final Orders of the Board within 35 days. The Rules of the Supreme Court of Illinois establish filing requirements.

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 6th day of April, 1989 by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board