

ILLINOIS POLLUTION CONTROL BOARD
December 20, 1984

WILLIAM H. CLARKE and)	
PIONEER PROCESSING, INC.,)	
)	
Petitioners,)	
)	
v.)	PCB 84-150
)	
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

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

This matter comes before the Board upon a November 29, 1984, motion to join necessary parties filed on behalf of William H. Clarke and Pioneer Processing, Inc. (Petitioners). Responses to that motion were filed by the County of LaSalle, Rosemary Sinon, Marie Madden and Joan Benya Bernabei (Objectors) and the Illinois Environmental Protection Agency (Agency) on December 7, 1984. On December 17, 1984, Petitioners filed a reply and, in the alternative, a motion to amend its original motion, which was accompanied by a motion to file its reply instanter. Leave to file instanter is hereby granted.

The original motion requests that the Board join the Objectors, the People of the State of Illinois, the Village of Naplate, the City of Ottawa, the Village of Ottawa, the Village of Utica, the Ottawa Township Board of Trustees, the Town of Ottawa and Residents Against Polluted Environment as necessary parties. The Objectors objected to joinder since over 60 days of the 90 day statutory period for decision have already run*, thereby severely prejudicing their rights. They, therefore, move that the joinder motion be denied unless petitioners would agree to extend the statutory decision date to 90 days from the date of joinder. They conclude that "absent such agreement, the motion should be denied and the permit appeal should be denied (sic) for failure to join necessary parties." The Agency also objects to the joinder motion if there is not an additional waiver of the statutory decision period. In its reply, Petitioners' request "that the Board grant Petitioners' Motion to Join Necessary Parties, as amended herein, and that the

*The Board notes that Pioneer has waived the decision date until February 21, 1985, but that such waiver would not allow 90 days from the date of joinder.

persons or entities named in Petitioners' motion be served and that they be permitted, by a date certain, to intervene as party (sic) herein."

First, the Board finds that the persons who are requested to be joined as parties in the original motion are not necessary parties in the sense that the Board cannot exercise jurisdiction in this case absent their joinder. Even Petitioners have admitted as much (and in their reply rephrase the original motion as a "Motion to Allow Additional Parties to be Designated"). While the Objectors contend that the appeal should be denied for failure to join necessary parties, their only support for the proposition that there are necessary parties who have not been joined is that the Petitioners have acknowledged them to be so. As noted above, that acknowledgement (if it ever existed in the sense that Petitioners' contend) has been withdrawn. Thus, the various pleadings contain no basis from which the Board can conclude that there are any necessary parties who must be joined. Perhaps more importantly, given Petitioners' request in its reply, there no longer appears to be any motion before the Board requesting the joinder of necessary parties.

Second, the Petitioners' amended request that the Board serve the persons named as necessary parties in the original motion and allow their intervention by a date certain is denied. The Board can find no reason to change its usual notice and service procedures. Hearing notices and mailings of Board opinions and orders will be handled in accordance with the Act and Board rules. If Petitioners, or anyone else, wishes to serve these persons, they can do so. Further, the Board will not allow intervention when no petition for intervention is before it, nor will the Board set any arbitrary cut-off date for intervention petitions to be filed.

Third, the Objectors motion to deny joinder or alternatively to deny the permit appeal are not properly before the Board since the Objectors are not parties to this action and have not intervened. However, the effect of this Order is to grant the motion to deny joinder.

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 20th day of December, 1984 by a vote of 5-0.


 Dorothy M. Gunn, Clerk
 Illinois Pollution Control Board