

ILLINOIS POLLUTION CONTROL BOARD  
February 9, 1984

ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
 )  
Complainant, )  
 )  
v. ) PCB 81-18  
 )  
CATERPILLAR TRACTOR CO., )  
a California Corporation, )  
 )  
Respondent. )

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

On November 17, 1983 the hearing officer in this matter certified for review by the Board that portion of his November 3, 1983 order which denied Caterpillar Tractor Company's general objection to the Illinois Environmental Protection Agency's August 12, 1983 interrogatories. On November 29, 1983 Caterpillar filed a motion requesting that a briefing schedule be set. That motion was granted on December 1, 1983 and the briefing schedule was ordered as requested. Caterpillar filed its brief on December 12, 1983 and the Agency filed its brief on December 30, 1983.

Caterpillar has stated its "general objection" as follows:

Caterpillar objects to these discovery requests as untimely, and as not being calculated to lead to discovery of relevant information for the reason that it is admitted that Caterpillar had obtained the permit alleged by the IEPA to be required and that therefore, no penalty is appropriate.

In other words Caterpillar is claiming that no information would be relevant unless it pertains to the penalty issue and that no penalty can legally be imposed.

The Board affirms the hearing officer's ruling and rationale. Caterpillar has not admitted that a permit was necessary and the determination of that issue is at least in part a question of fact. Further, Caterpillar's subsequently granted permit does not in and of itself preclude the imposition of a penalty.

While this case may, as Caterpillar alleges, stand "on all fours" with Harris-Hub v. IPCB, 30 Ill. App. 3d 608 (1st District, 1977), the question of whether Caterpillar was merely in "technical non-compliance" is also a question of fact. Where questions of fact remain, discovery is clearly appropriate.

Further, the case is not, as Caterpillar alleges, moot in that the above-noted issues remain. If Caterpillar desires to admit the necessity of a permit, it has every right to do so, but until it does, the issue remains, and even if such admission is made, the question of a penalty remains. These are not "abstract questions" devoid of "any practical legal effect on the controversy" [Betts v. Ray, Ill. App. 3d 168, 171 (1st District, 1982)].


Finally, while the Board fails to understand the two year delay in discovery in this matter, there is no indication that either party has proceeded diligently or that any prejudice has resulted from the delay.

The objection to the hearing officers' order regarding interrogatories which was certified to the Board on November 17, 1983, is hereby denied.

IT IS SO ORDERED.

Board Member J. Theodore Meyer dissented.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board hereby certify that the above Order was adopted on the 9<sup>th</sup> day of February, 1984 by a vote of 6-1.

  
Christan L. Moffett, Clerk  
Illinois Pollution Control Board