

ILLINOIS POLLUTION CONTROL BOARD
February 7, 1985

CATERPILLAR TRACTOR COMPANY,)
A California Corporation,)
(Mapleton Plant),)
)
Petitioner,)
)
v.) PCB 83-58
)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

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

This matter comes before the Board on an April 26, 1983 permit appeal filed by Caterpillar Tractor Company (Caterpillar). The permit appeal challenged the Illinois Environmental Protection Agency (Agency) denial of operating permits for Caterpillar's Boilers No. 1, No. 2, and No. 3 at the Mapleton plant. In a January 14, 1985 document entitled "Settlement Stipulation," Caterpillar and the Agency move the Board to remand the present permit appeal back to the Agency for reconsideration.

The Board notes that the request gives rise to several questions. For example: what effect does a remand have on the Board's or the Agency's duty to reach a decision within 90 days? Does the remand act to simply stay this matter? If so, for what length of time? Can this proceeding be reopened or must it be dismissed at some later date? Does not the remand of a permit appeal to the Agency result in a loss of Board jurisdiction over this proceeding which cannot be reinstated at a later date due to the 35 day statutory limitation of Section 40(a)(2) for the filing of a permit appeal? Is the requested action consistent with the Board's July 14, 1983 Order in Caterpillar Tractor Co. v. IEPA, PCB 79-180, 53 PCB 01? Why is the earlier Caterpillar procedure inappropriate in this case?

The Board is unwilling to grant, or deny, the requested relief without having resolved these questions. Therefore, the Board will defer such ruling until February 20, 1984, and requests that any briefs or memoranda the parties may desire to submit regarding these and other such questions be filed with the Board on or before February 15, 1985.

Due to the short period of time between submission of such briefs or memoranda and the time for decision, the Board requests that a copy of such submissions be mailed to Board Member John Marlin at 104 W. University Avenue in Urbana, IL 61801 in addition to filing at the Board's Chicago office.

IT IS SO ORDERED.

Board Member B. Forcade dissented.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 7th day of February, 1985 by a vote of 4-1.

Dorothy M. Gunn
Dorothy M. Gunn, Clerk
Illinois Pollution Control Board