

ILLINOIS POLLUTION CONTROL BOARD
January 23, 1986

CITY OF COLUMBIA, WALTER BYERLY, JR.,)
BARBARA HEINLEIN, DANIEL HEINLEIN;)
HOMER STEMLER AND LORETTA STEMLER,)
)
Petitioners,)
)
v.) PCB 85-177
) and
COUNTY OF ST. CLAIR AND BROWNING-) PCB 85-223
FERRIS INDUSTRIES OF ILLINOIS, INC.,)
)
Respondents.)

BROWNING-FERRIS INDUSTRIES OF)
ILLINOIS, INC.,)
)
Petitioner,)
)
v.) PCB 85-220
) (Consolidated)
COUNTY OF ST. CLAIR, ILLINOIS)
)
Respondent.)

ORDER OF THE BOARD (by J. Anderson):

In its Order of December 20, 1985, the Board established a briefing schedule concerning an issue common to these actions (consolidated by Board Order of January 9, 1986): whether the 120 day decision period specified in P.A. 82-682 or the 180 day decision period of P.A. 83-1552 applied to BFI's June 27, 1985 application for site location suitability approval. This Order a) explains why the Board must defer ruling on this issue, despite its announced intent to make such a ruling today, b) requires that the hearing scheduled for February 13, 1986 proceed, and c) directs the County to file with the Board copies of exhibits admitted into the County hearing record on September 24 which have not been filed with the Board.

Legal briefs on the decision deadline issue were filed by the County on January 9, 1986 and by BFI on January 10 and 21, 1986. On January 13, the City, et al., filed a document entitled Response to Board Order of December 20, 1985. While the Board agrees with BFI's observation that this filing is not responsive to the Board's request for briefs on the deadline issue, the Board declines to strike the filing as it constitutes an amendment to the petition which is directly relevant and material to the Board's inquiry. Two aspects of this filing are

particularly noteworthy at this time. First, at pps. 2-3 of its filing, the City appears to object to the Board's determination of the deadline statutory construction issue in advance of public hearing. Secondly, at p. 6, the City notes its contention that the notice given by BFI of its application pursuant to Section 39.2(a) of the Act was untimely and otherwise improper.

The Board notes that the effects of deficient notice has recently been considered by the Second District Appellate Court in Kane County Defenders, et al. v. Pollution Control Board, et al., No. 84-940, December 30, 1985. The Court there found that the applicant's "failure to publish appropriate newspaper notice...rendered the county board hearing invalid for lack of jurisdiction" and accordingly vacated the County's decision (slip Op. at p. 8). The Board accordingly finds that it would be premature for the Board to reach any decision concerning decision deadlines applicable to the County before reaching the issue of whether the County had a valid application over which it was required to exercise jurisdiction by any given date. Secondly, the Board declines to decide the statutory issue prior to hearing over BFI's objection, in the interests of eliminating any additional procedural grounds for appeal of the Board's ultimate rulings in this matter.

The Board observes that, absent waiver, decision is due in PCB 85-177 on April 1, and that the regular Board meeting scheduled immediately prior to that date is March 27; approximately one-half of the Board's 120 day decision period has therefore elapsed. The Board therefore directs that the hearing in these consolidated actions noticed and scheduled for February 13 should proceed without continuance, to allow the Board sufficient time to deliberate these matters.

Additionally, the Board notes that the County's Record as filed January 14 and supplemented January 21 is incomplete. The transcript of the September 24 hearing indicates that some 22 "defendant/objectors" exhibits were introduced, as well as an unspecified number of petitioner's exhibits. None of the former exhibits have been submitted, and only some of the latter have been submitted, significant omissions being exhibits reflecting BFI's Section 39.2(a) notice. The County Clerk is therefore directed to prepare and file a) seven copies of an amended certificate listing in one document the materials submitted January 14 and 21 as well as the numbers and descriptions of the hearing exhibits, and b) three copies of the hearing exhibits themselves. These shall be filed with the Board on or before February 9.

Finally, the City's January 13, 1986 petition to intervene in PCB 85-220 is referred to the Hearing Officer for disposition. The Board notes that service of the motion upon BFI by mail was not initiated by the City until January 21, and Board staff verified on January 22 that BFI was unaware of and had not received the motion.

The Clerk of the Board is directed to serve copies of this Order on the parties today via first Class mail, with the usual certified mail service to follow.

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 23rd day of January, 1986, by a vote of 7-0.

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