

ILLINOIS POLLUTION CONTROL BOARD
June 2, 1983

CATERPILLAR TRACTOR COMPANY,)
)
) Petitioner,)
)
) v.) PCB 79-180
)
) ILLINOIS ENVIRONMENTAL PROTECTION)
) AGENCY,)
)
) Respondent.)

INTERIM ORDER OF THE BOARD (by J. Anderson):

On May 6, 1983, Caterpillar moved to dismiss this appeal on the grounds that on April 18, 1983 the Agency had issued a permit "incorporating the components of the agreement between the parties" resolving the issues of this appeal.

This motion indicates that confusion still exists concerning the ability of the Agency to modify a permit by issuing yet another permit during the pendency of its appeal to the Board. In Alburn, Inc. v. IEPA, PCB 81-23,24 (March 19, 1981 as reaffirmed May 1, 1981), the Board considered the effect of the Agency's purported "issuance" of a new permit covering the same operation of the same facility which was the subject of an earlier, still pending, permit denial appeal. The Board found that the earlier issued permits "could not be nullified by Agency modification or reissuance until dismissal of the petitions."

To put this more clearly, the Board finds that the Agency has no jurisdiction to issue any subsequent permits once the disputed permit has been appealed to the Board, just as the Board has no authority to modify its Orders once they have been appealed to the courts. The April 18, 1983 "permit" "issued" to Caterpillar is a nullity.

It is clear from this and other recent cases that, once settlement negotiations have been concluded between the Agency and the contesting permittee, the permittee wishes the Board in some fashion to insure that the Agency will in fact issue the "negotiated" permit exactly as agreed to between the parties. The Board has held that it will not rubberstamp a "negotiated" permit which is presented to it with the bare assertion that "this is what we have agreed upon". Should the parties wish to have a permit appeal resolved by a Board Order that a particular negotiated permit issue, a stipulation and proposal for settlement should be presented at hearing setting out sufficient technical

facts and legal assertions to allow the Board to exercise its independent judgment and to make proper findings of fact and conclusions of law. While the Board notes that the court system does not always impose such requirements to its acceptance of settlements, the Board believes that for it to do otherwise would be to unlawfully delegate its statutory charge to "determine, define, and implement the environmental control standards applicable in the State of Illinois" [Section 5(b) of the Act].

As Caterpillar's motion to dismiss was based on the faulty premise that the April 18, 1983 "permit" would be in effect upon dismissal of this action, decision on the motion will be deferred until June 30, 1983. The parties are directed to file any supplements to the motion on or before June 20, 1983.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 2nd day of June, 1983 by a vote of 4-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board