

ILLINOIS POLLUTION CONTROL BOARD
February 6, 1986

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
v.) PCB 84-85
)
VILLAGE OF ORANGEVILLE,)
)
Respondent.)

ORDER OF THE BOARD (by R. C. Flemal):

On January 8, 1986 the Village of Orangeville ("Orangeville") filed a motion requesting re-hearing and a stay of the Board's December 5, 1985 Order in this matter. The Illinois Environmental Protection Agency ("Agency") responded to the motion on January 15, 1986.

Orangeville contends that its "lack of legal representation, among other reasons" prevented it from presenting all of the evidence in its defense at the August 21, 1985 hearing held in this case. Orangeville claims that a re-hearing of the case would allow Respondent to present "additional evidence", and requests a stay of the Board's December 5 Order until another hearing might be held.

The Board does not find any merit in Orangeville's position that because it was not represented by counsel before the Board, it is therefore entitled to hearing de novo. The Board's rules provide that parties to Board proceedings may elect to be represented by an attorney, but there is no inherent obligation to be so represented (see 35 Ill. Adm. Code 101.106). If the Board were to accept Orangeville's contention that it was prejudiced by electing to forego the utilization of counsel in its defense, such a precedent would ostensibly cause every party before the Board to represent itself initially, then if dissatisfied with the result cause another round of proceedings by simply petitioning the Board for a re-hearing as Orangeville now does. Such a scenario is untenable.

Moreover, the findings of violation entered against Orangeville resulted from Agency allegations that were conclusively proven by facts entered at hearing. Thus it is difficult to see how representation by counsel could bring about a different outcome.

Respondent's motion for re-hearing and a stay of the Board's December 5, 1985 Order is denied.

IT IS SO ORDERED.

Board Members J. Theodore Meyer and Walter J. Nega
dissented.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control
Board, hereby certify that the above Order was adopted on
the 6th day of February, 1986, by a vote
of 5-2.

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