

ILLINOIS POLLUTION CONTROL BOARD  
October 5, 1982

DONALD J. HAMMAN )  
 )  
 ) Petitioner, )  
 )  
 ) v. ) PCB 82-15  
 )  
 ) ILLINOIS ENVIRONMENTAL PROTECTION )  
 ) AGENCY, )  
 )  
 ) Respondent. )

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

On September 22, 1982 Intervenor in this matter filed a petition to dismiss and to void permit or in the alternative to immediately rule on motions to continue, stay and issue subpoena which were filed with the Board on May 21, 1982. A motion for expedited consideration was filed on September 24, 1982 by Donald J. Hamman.

Hamman's motion for expedited consideration is hereby granted while all of Intervenor's motions are denied. The Board does not accept the Intervenor's reasoning that the Appellate Court's Order concerning PCB 80-153 effectively voids the developmental permit issued December 31, 1981 for the site at issue here. All that Order and the Board's September 15, 1982 Order purport to do is to require the Illinois Environmental Protection Agency (Agency) to issue a developmental permit with an added condition regarding the upgrading of 111th Street. That condition is immaterial with respect to this action, and to hold that such modification of the permit voids the previous permit and, therefore, moots this action which attacks that permit, would require that the identical action be refiled under a different docket number, causing unnecessary delay and elevating form over substance.

Further, Intervenor's request for an immediate decision on the May 21, 1982 motions is premised upon its concern that failure to so rule could cause the permit to issue by operation of law. Such fear is unwarranted in that the decision date was extended by Hamman until 90 days from the date that the Appellate Court rendered its decision concerning PCB 80-153. The Board determines this to have occurred on September 3, 1982, the date of mandate issuance, thus making the decision date December 6, 1982. Despite Intervenor's apparent misunderstanding of the decision date, the Board hereby rules upon those motions and

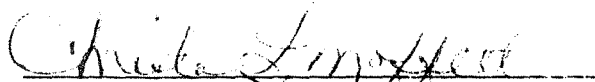
denies them since the right to a decision runs to Hamman, and the Intervenor's must accept the case at the point they enter it. While it was within the hearing officer's discretion to allow a continuance, the Board upholds his denial.

Intervenor's intervened after discovering that the Board had denied their motion to dismiss for lack of standing in the context of a "Special Limited Appearance" contesting the jurisdiction of the Board to hear this case. The Board has now rejected that jurisdictional argument. The only other argument advanced for continuance is the desire to examine Thomas Cavanagh, the Agency Manager who signed the permit, apparently to determine his thought processes. While some testimony of that sort might be relevant, the prejudice caused to Hamman by further delay outweighs its likely probative value, and denial of continuance was proper, thus mooting the motion for issuance of a subpoena.

To avoid further delay the Board hereby grants Hamman's motion for expedited consideration.

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 5<sup>th</sup> day of October, 1982 by a vote of 5-0.

  
 Christan L. Moffett, Clerk  
 Illinois Pollution Control Board