

ILLINOIS POLLUTION CONTROL BOARD  
February 2, 1978

WINNETKANS INTERESTED IN PROTECTING )  
THE ENVIRONMENT (WIPE), )  
 )  
Complainant, )  
 )  
 )  
v. ) PCB 77-320  
 )  
 )  
ENVIRONMENTAL PROTECTION AGENCY and )  
THE VILLAGE OF WINNETKA, )  
 )  
Respondents. )

ORDER OF THE BOARD (by Mr. Goodman):

On December 5, 1977, the Winnetkans Interested in Protecting the Environment (WIPE) filed a Complaint against the Environmental Protection Agency and the Village of Winnetka alleging that Winnetka's construction permit to install two diesel electric generators at its Tower Road site was issued by the Agency in excess of its authority. On January 17, 1978, WIPE filed a First Amended Complaint alleging the same cause of action. Both the Agency and the Village of Winnetka have filed Motions to Dismiss.

The Amended Complaint alleges that, because Winnetka gave no proof of and the Agency gave no consideration to either the potential noise emissions from the subject generators or the potentially carcinogenic effects of diesel engine exhaust fumes and combustion products, the Agency issued the permit in excess of its statutory authority. However, the Board finds that neither Winnetka nor the Agency were required to consider these factors as part of the permit process. There is no permit requirement for noise sources, and an applicant for a permit to construct an air emission source is not required to prove in its permit application, nor is the Agency required to determine, that the source will comply with the noise standards. Furthermore, the permit process is not the appropriate procedure for determining the health effects of the fumes to be emitted from Winnetka's generators, and Winnetka was not required to prove in its application, nor was the Agency required to determine, that the fumes would not be carcinogenic. The Board


finds that the Complaint does not state a cause of action. The Amended Complaint is hereby dismissed. The Board notes that any source is required to comply with the Noise Regulations and the prohibition against air pollution regardless of the existence of a permit.

An issue raised in the Motions to Dismiss was whether the 45-day limit for filing a permit appeal pursuant to Rule 502(a) (2) of the Board's Procedural Rules applies to the filing of an action seeking revocation of a permit pursuant to Rule 503(a). The Board finds that the 45-day limit is intended to apply to Rule 503(a).

Mr. Dumelle concurs.

Mr. Young dissents.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Order was adopted on the 2<sup>ND</sup> day of February, 1978 by a vote of 4-1.

  
Christan L. Moffett, Clerk  
Illinois Pollution Control Board