

ILLINOIS POLLUTION CONTROL BOARD
September 20, 1979

ENVIRONMENTAL PROTECTION AGENCY,)	
and THE METROPOLITAN SANITARY)	
DISTRICT OF GREATER CHICAGO,)	
)	
Complainants,)	
)	
v.)	
)	
INTERLAKE, INC.,)	
)	
Respondent,)	
)	
and)	PCB 75-13
)	PCB 75-44
)	<u>Consolidated</u>
INTERLAKE, INC.,)	
)	
Petitioner,)	
)	
v.)	
)	
ENVIRONMENTAL PROTECTION AGENCY,)	
)	
Respondent.)	

INTERIM ORDER OF THE BOARD (by Mr. Goodman):

The Stipulation and Proposal for Settlement (Stipulation) presented to the hearing officer on July 31, 1979 is rejected.

Neither a stipulation nor a settlement proposal in an enforcement proceeding may have the effect upon its adoption by the Board of granting or denying a variance from the Board's regulations. This is true whether a variance petition is consolidated with an enforcement complaint or whether it is docketed alone. The Board's Order of April 4, 1975 consolidating PCB 75-44 with PCB 75-13 "for hearing and decision" does not have the effect of altering the respective burdens of proof attendant upon the respective proponents.

The Stipulation in this matter is material to the enforcement proceeding only insofar as it states other than facts. The Board does accept stipulations in variance proceedings, but their effect is limited to the facts involved and not the merits of granting or denying a variance. In enforcement proceedings, neither Complainant nor Respondent need plead the detailed

facts in the Board's Procedural Rule 401(a), and the Environmental Protection Agency is not required to file recommendations. It is to be noted that the Board's Procedural Rules provide for a particular settlement procedure in enforcement proceedings but are silent about settlements in variance proceedings.

Paragraph 20 of the Stipulation conditions effect of the settlement of the enforcement proceeding upon the Board's granting a variance from Rule 703(a) of its Water Regulations. Paragraph 21 details conditions to be applied to such proposed variance. Neither paragraph can be given effect by the Board.

The Board finds that the record in the variance petition herein, PCB 75-44, is insufficient for purposes of enabling a decision. The proposed settlement agreement by the parties will be immaterial to that record as it does not constitute the pleading of facts. However, the Board will not disallow stipulations by Petitioner to facts.

The Stipulation is rejected for the additional reason that it imposes a contingent, future penalty and provides for a suspension of penalty, or a "credit". The Board does not favor such provisions.

ORDER

It is the Order of the Pollution Control Board that:

- 1) The Stipulation submitted in the consolidated matters PCB 75-13 and PCB 75-44 is rejected.
- 2) The consolidated matters PCB 75-13 and PCB 75-44 are hereby severed for all purposes for the expeditious determination of claims and in the interest of convenience, with further hearings to be conducted as may be necessary to complete the records.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Interim Order was adopted on the 20th day of September, 1979 by a vote of 5-0.


Christan L. Moffett, Clerk
Illinois Pollution Control Board