

ILLINOIS POLLUTION CONTROL BOARD

December 5, 2002

BRIAN FINLEY, individually, LOCAL 3315)
of the AMERICAN FEDERATION OF)
STATE, COUNTY, & MUNICIPAL)
EMPLOYEES (COOK COUNTY PUBLIC)
DEFENDERS ASSOCIATION), and the)
following additional individuals: LISA A.)
KOSOWSKI, QUENTIN PITLUK, MARTHA)
C. NEIRA, JOEL TOBIN, TACYE)
VERSHER, SEAN VARGAS-BARLOW,)
ROSA FLORES, DANITA KIRK, JENNIFER)
BOROWITZ-GUTZKE, OPHELIA BARNER-))
COLEMAN, KARIN WENZEL, BARBARA)
A. BLAINE, VALLERIA FORNEY, JAMES)
BURTON, AMANDA LAMERATO,)
JENNIFER HOMBURGER, THOMAS)
GRIPPANDO, KATE HAARVEI, K. MARY)
FLYNN, CHRIS WILLIAMS, ALPA J.)
PATEL, PAMELA D. MOSS, LILIANA J.)
DAGO, PATRICIA CINTRON-BASTIN,)
TAMMY EVANS, CELESTE K. JONES,)
WILLIAM A. GOMEZ, KAREN MAHER,)
TRESA LOUISE JACKSON, MARCIA G.)
HAWK, MARIZOL RODRIGUEZ,)
MODHURI K. PATEL, JOSE A. PEREZ,)
NICHOLAS A. YOUNGBLOOD,)
CATHLEEN REYNOLDS, DAWN M.)
ROESENER, KIMBERLIE BOONE, AMY E.)
McCARTHY, QUENTIN HALL,)
GWENDALYN GRANT, GAIL DAILY,)
COREY E. MYERS, MARIA DI)
CRESCENZO, MARIBEL RODRIGUEZ,)
FELICIA BATES, DARNELL TROTTER,)
HATTIE MARTIN, AUGUSTUS)
PINCKNEY, GEORGE SANCHEZ, LIZETTE)
U. McBRIDE, DEBORAH BUFFKIN,)
RONALD JACKSON, JOANNE)
MORRISON, VALARIE M. COURTO-HILL,)
KIMBERLY TURNER, CONSTANCE L.)
HARRIS, STEPHANIE FLOWERS, B.)
YVONNE YOUNGER, DORIS J. YUFUF,)
LUCRETIA ROGERS, DANA N. LOCKETT,)
TAMARA BRASS, JAMES COLEMAN,)
SIDNEY TYUS, JACK L. McBRIDE,)

PHYLLIS RYAN, DORIS LOPEZ, SHIRLEY))
A. VESSEL, MARY PEARSON, ANGELINE))
RECANDEZ, DELORES WASHINGTON,))
PATRICIA M. SALORIO, MICHELLE E.))
HOLMES, RY HANNAH, ADDIE))
HAWKINS, RONALD DOZIER, BARBARA))
GORDON, RALPH LEAKES, WILLIE))
LEAKS, JR., THEODORE SHORTER, JR.,))
QUDALLA WARD, MICHAEL JONES,))
PEARLIE MAE MOSS, SHEILA DUNN,))
SHARON LEE, LAVERNE BULLOCK,))
HELEN CHARLES, EDWARD J. POE,))
ANTHONY BINGHAN, RENETTA GLASS))
WARD, LILLIAN OWENS, FREDDIE))
JOHNSON, MINNIE HORTON, CARL))
TRIBBLE, SR., CLAY APPLETON, SAM))
JOHNSON, GENEVA L. CHARLES and))
NATHANIEL CHARLES,))
Complainants,))
v.))
IFCO ICS-CHICAGO, INC.,))
Respondent.))

PCB 02-208
(Citizens Enforcement - Air)

ORDER OF THE BOARD (by T. E. Johnson):

On May 21, 2002, Local 3315 of the American Federation of State, County & Municipal Employees (AFSCME), Brian Finley, and other named individuals (complainants) filed a complaint alleging that IFCO ICS-Chicago, Inc. (IFCO) violated Section 9(a) of the Environmental Protection Act (Act) (415 ILCS 5/9(a) (2000) *amended by* P.A. 92-0574, eff. June 26, 2002) by emitting chemicals, odors, and smoke into the environment, resulting in air pollution. IFCO's facility is located at 2300 West 13th Street in Chicago, Cook County.

On November 18, 2002, the parties filed a joint motion asking the Board to dismiss the complaint because the parties have entered into a stipulation and proposed settlement agreement, which accompanied the motion. Mot. at 1. The parties assert in their joint motion that the Board is not obligated to hold a hearing before accepting this stipulation and proposal for settlement. Mot. at 1-2. The parties contend that Section 103.304 of the Board's procedural rules indicates a hearing is only required in connection with a stipulation and proposal for settlement when the Board orders a hearing be held in accordance with Section 103.300(c). Mot. at 1. The parties argue that Section 103.300(c) only addresses settlements in enforcement actions brought by the State. Thus, assert the parties, the requirement that a hearing be held prior to the Board

approving an enforcement settlement only applies when the complaint is brought by the State. *Id.*

Section 31(d)(1) of the Act states, “Any person may file with the Board a complaint, meeting the requirements of subsection (c) of this Section” Unless the Board determines that such complaint is duplicative or frivolous, it shall schedule a hearing.” 415 ILCS 5/31(d)(1) (2000) *amended by* P.A. 92-0574, eff. June 26, 2002). Section 31(c)(1) provides that a complaint “. . . shall require the person so complained against to answer the charges of such formal complaint at a hearing before the Board” Section 31(c)(2) provides an exception to the hearing requirement for stipulated settlements filed by the Attorney General. This exception was adopted in P.A. 87-134 that became effective on August 13, 1991. Prior to the adoption of P.A. 87-134, the Board required that hearing be held on all complaints including cases where the Attorney General filed stipulations. *See e.g., IEPA v. Ekco*, PCB 88-177 (Feb. 23, 1989).

The Board has consistently required citizen enforcement cases to proceed to hearing before a stipulation would be accepted. *See e.g., Lardner v. Dominick’s Finer Foods, Inc.*, PCB 00-92 (Feb. 15, 2001); *Malina v. Day*, PCB 98-54 (July 22, 1999); *Corning v. Thurela*, PCB 96-69 (Aug. 15, 1996); and *Landfill Emergency Action Committee v. McHenry County Sanitary Landfill and Recycling Center, Inc.*, PCB 85-9 (Jun. 20, 1986). No exception to the hearing requirement exists for citizen’s enforcement actions. Because Section 31(d) provides that a complaint must meet the 31(c) requirements, and 31(c)(1) requires a hearing, a hearing in a citizen’s enforcement action cannot be waived.

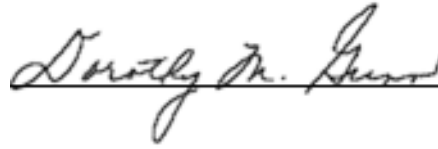
The Board is not persuaded by the argument that its procedural rules do not require a hearing in a citizen’s enforcement action. In its December 21, 2000 opinion accompanying the procedural rules, the Board stated that it “will hold a hearing when parties to a citizen enforcement action ask the Board to approve the terms of the proposed settlement. If the parties do not desire a hearing on the proposed settlement, they may file a motion to dismiss the case.” *Revision of the Board’s Procedural Rules: 35 Ill. Adm. Code 101–130, R00-20* (Dec. 21 2000), slip op. at 11.

Accordingly, the Board denies the joint motion to dismiss the complaint. The parties are directed to proceed to a hearing on the proposed settlement if they desire the Board to enter the relief specified therein.

IT IS SO ORDERED.

Chairman C.A. Manning and Board Member M.E. Tristano dissented.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on December 5, 2002, by a vote of 4-2.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", written over a horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board