

ILLINOIS POLLUTION CONTROL BOARD

January 3, 1975

THE EARLY AND DANIEL COMPANY,)
 Petitioner,)
)
 v.) PCB 74-368
)
ENVIRONMENTAL PROTECTION AGENCY,)
 Respondent.)

ORDER OF THE BOARD (by Dr. Odell)

In its Interim Order of December 5, 1974, the Pollution Control Board (Board) set this cause for hearing. Since that time, Petitioner has filed motions seeking to dispose of its Petition for Variance without hearing and to limit the issues at hearing.


In the Motion For Ruling On Motion To Modify Order, we hold that a hearing must be held. In our Interim Order of December 5, we construed the letters from Petitioner requesting "an extension of time for compliance . . ." as a Petition for Variance. A Motion To Modify is not the correct mechanism to grant a variance extension. Not only was the Motion filed long after the Board's final Order of May 9, 1974 (see Environmental Protection Agency v. Early and Daniel Company PCB 73-454, 12 PCB 237), but facts occurring since the May 9 decision are the bases for the needed extension. The need for a hearing rests on citizen objections filed October 5 and 11, 1974. Section 37 of the Environmental Protection Act (Act) mandates a hearing if objections are filed "within 21 days" of the variance petition. To effectuate the purposes of the Act, we consider the objections to have been filed on October 18, the date of the filing of the Amended Petition. To rule otherwise would enable a Petitioner to avoid a hearing by initially filing an inadequate petition and amending it after all objections had been filed.

We deny Petitioner's Motion To Strike. Timely compliance with the terms of the Board's May 9, 1974, Order may go to the issue of good faith, which can be a factor in determining arbitrary or unreasonable hardship.

Motions to dispose of this case without hearing and to limit the issues at hearing are hereby denied.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 3rd day of January, 1974, by a vote of 5 to 0.


Christan L. Moffett