

ILLINOIS POLLUTION CONTROL BOARD
November 29, 1990

NATURAL GAS PIPELINE COMPANY)
OF AMERICA,)
)
Petitioner,)
)
v.) PCB 87-150
) (Permit Appeal)
)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

ORDER OF THE BOARD (by J. C. Marlin):

On June 7, 1990, the Board directed the parties to submit a status report on this permit appeal no later than October 1, 1990. The Board stated that: "If this case is not settled by that date, the Board will consider ordering it to hearing or dismissing it for want of prosecution." On October 11, 1990, the Board directed the Hearing Officer to schedule this matter for hearing by October 30, 1990 and to complete all such hearings no later than December 31, 1990. The Hearing Officer scheduled a hearing for December 14, 1990.

Petitioner operated a Class I non-hazardous underground injection well called the Herscher Well pursuant to the interim "authorization by rule" provisions of the Board's regulations a 35 Ill. Adm. Code 704. Petitioner filed a timely application for a permit for the Herscher Well on September 5, 1985. The permit application was denied by the Respondent in September, 1987. Petitioner filed an appeal of this denial on October 9, 1987. Pursuant to 35 Ill. Adm. Code 705.205, the permit is stayed pending the resolution of this appeal. The motion states that:

"the parties have agreed that the Agency will issue a draft permit for the Herscher Well and Natural will dismiss this appeal. The Agency has agreed to issue a draft permit on November 30, 1990, or as soon thereafter as possible, and Natural will dismiss this appeal promptly thereafter."

On November 7, 1990 an "Agreed Motion To Stay Expiration Of Permit By Rule In Connection With Dismissal Of Appeal" was filed. The motion requests that the Board by order grant a continuing stay to the Petitioner after dismissal of this appeal, in order to continue regulatory authority to operate under permit

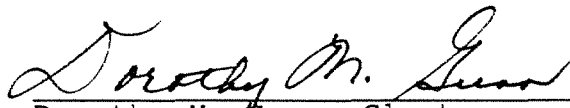
by rule.

Section 705.205 provides that: "[i]f an appeal to the Board is filed, the effective date of the permit and all conditions are stayed until the appeal is concluded, unless the Board orders otherwise." The Petitioner believes that dismissal puts the stay upon which they are relying at risk.

This case was originally filed October 9, 1987. On November 15, 1988, a Hearing Officer Order was filed with the Board stating that the parties had reached a settlement through which a permit would be issued. As the previous discussion has shown the matter remains unresolved. The Board is reluctant to grant an indefinite stay of the permit denial in this proceeding. The fact that a draft permit will be issued at a future date by no means assures the Board that the matter is resolved. The Board feels it more appropriate that the hearing scheduled for December 14, 1990, be continued in order to ensure complete and final resolution of this appeal. Therefore, the Board grants a continuance of that hearing. However, if the Board has not received a motion to dismiss this proceeding by January 2, 1991, this matter will be set for hearing on the merits.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 29th day of November, 1990, by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board