

ILLINOIS POLLUTION CONTROL BOARD
June 23, 1994

ILLINOIS ENVIRONMENTAL PROTECTION)
AGENCY,)
)
Complainant,)
)
v.) PCB 83-150
) (Enforcement)
)
ARCHER DANIELS MIDLAND,)
)
Respondent.)

ORDER OF THE BOARD (by C. A. Manning):

This matter comes before the Board on a Motion for Reconsider and a Motion for Relief from Hearing Requirement filed on May 31, 1994 by the Archer Daniels Midland Company (ADM) and the People of the State of Illinois (State). ADM requests the Board to reconsider its order which required that a hearing be held in this matter or alternatively ADM requests relief from the hearing requirement. The State requests relief from the hearing requirement pursuant to Section 31(a)(2) of the Illinois Environmental Protection Act (Act). (415 ILCS 5/31 (1992).)

The Board directed this matter to hearing pursuant to Section 31 of the Act, in its May 19, 1994 order. ADM states that Section 31 of the Act does not require a hearing in this matter but only on the appropriate filing of a complaint. ADM argues that since this is not before the Board upon a filing of a complaint but rather a motion to modify a Board order no hearing is required pursuant to Section 31 of the Act. ADM further states that it is in the Board's discretion to require a hearing but a hearing should not be necessary and therefore alternatively request relief from the hearing requirement.

The State in its motion for relief from the hearing requirement states that since the parties agree to the requested modification a hearing is not necessary. Therefore the State moves the Board pursuant to Section 31(a)(2) of the Act to grant relief from the hearing requirement.

This matter was originally before the Board upon a seven-count complaint filed by the State on October 3, 1983. The complaint alleged that ADM violated Section 12(a) and 12(f) of the Act and certain Board regulations. The parties filed a signed Stipulation and Proposal for Settlement on August 5, 1987. The proposed settlement agreement provided that ADM agreed would pay a \$10,000 civil penalty and develop and implement a compliance plan to cure the violations. The requested modification is not

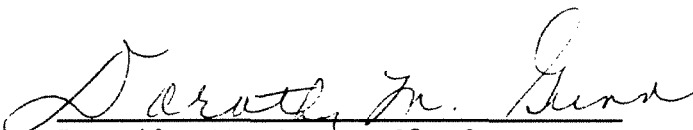
the result of newly discovered evidence but rather a result of a change in the conditions facing ADM which may prohibit it from meeting the compliance deadlines contained in the settlement agreement.¹ We feel that since the Board in effect would be modifying an enforcement settlement agreement in this matter which is now 11 years old the hearing requirements of Section 31 of the Act should apply. Therefore ADM's motion is denied.

As a result of Section 31 of the Act applying to this matter Section 31(a)(2) of the Act also applies. However, the Board may not rule on the motion to waive the hearing requirement until 21 days after the publication of the request to waive the hearing requirements. Therefore the Board will reserve ruling on the State's motion to waive the hearing requirements until said period runs. The Clerk of the Board shall publish the request to waive the hearing in this matter.

IT IS SO ORDERED.

Section 41 of the Environmental Protection Act, (415 ILCS 5/41 (1992)), provides for appeal of final orders of the Board within 35 days. The Rules of the Supreme Court of Illinois establish filing requirements. (See also 35 Ill. Adm. Code 101.246, Motion for Reconsideration).

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 23rd day of June, 1994, by a vote of 6-0.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board

¹ The Board had granted an earlier modification request in this matter on June 23, 1993. The modification request currently before the Board is to modify the Board's June 23, 1994 opinion and order.