

ILLINOIS POLLUTION CONTROL BOARD
May 7, 1992


ROCKFORD PRODUCTS CORPORATION,)
)
 Petitioner,)
)
 v.) PCB 91-31
) (Permit Appeal)
)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Respondent.)

CONCURRING OPINION (by B. Forcade):

I respectfully concur with the majority to express my frustration with the position the parties stated in the motion to reconsider. This proceeding was filed on February 20, 1991. On April 9, 1992, over one year later, the record contained no filings by the petitioner except continued waivers of the Board's decision deadline. The record did contain two separate orders from the hearing officer setting this matter for hearing on September 5, 1991 and December 1, 1991. With this background, on April 9, 1992, the Board ordered this matter set for hearing or it would be subject to dismissal for want of prosecution.

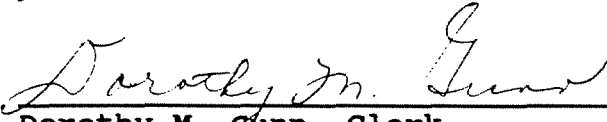
The motion for reconsideration says, in essence - how dare you force our case to hearing! The reconsideration motion states that the Board action "was improper" because it was not made in writing or orally at hearing. The parties further argue that the parties were not served or given 7 days notice of the action. They assert notice and opportunity for response were totally lacking in this case. The parties appear to be arguing for due process.

There is a substantial difference between "due process" (the right to be heard") and "overdue process" (the right to avoid being heard"). After languishing for over one year with no action on the record, this case is clearly in the latter category. I can reluctantly support this one last extension. However, I urge the parties either to settle this case promptly or litigate it promptly.



Bill S. Forcade
Board Member

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above concurring opinion was filed on the 8th day of May, 1992.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board