

ILLINOIS POLLUTION CONTROL BOARD
October 1, 1992

DOUGLAS FURNITURE OF)
CALIFORNIA, INC.)
)
Petitioner,)
)
v.) PCB 91-56
) (Permit Appeal)
)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

ORDER OF THE BOARD (by J. Anderson):

On September 22, 1992, Douglas Furniture of California, Inc., (Douglas) filed a motion asking the Board to dismiss its permit appeal without prejudice and with leave to reinstate the appeal within 45 days in the event the Illinois Environmental Protection Agency (Agency) fails to issue a corrected permit or places objectionable conditions in such permit. The Agency has not yet filed a response to Douglas' motion.

In support of its motion, Douglas states that, on March 27, 1992, it appealed the Agency's denial of its reapplication of an air operating permit for its wood furniture coating line. On July 21, 1992, the Agency issued a construction and operating permit contingent on dismissal of the permit appeal. Because the contingent permit contains typographical and other errors, the Agency has advised Douglas that it intends to issue a corrected permit in approximately one month. Douglas, however, will not have an opportunity to review the corrected permit prior to the completion of discovery (October 1, 1992) or the hearing in this matter (October 13, 1992). Douglas argues that it would be a waste of the Board's and the parties' time and resources to prepare for a hearing which may be rendered moot.

The Board hereby denies Douglas' motion. The Board questions the Agency's power to deny a permit on the basis that the petitioner failed to dismiss a permit appeal. (See Reichhold Chemical, Inc. v. IPCB (3rd Dist. 1990), 204 Ill.App.3d. 561 N.E.2d 1343.) The Board is also reluctant to dismiss a permit appeal without prejudice and grant leave to reinstate the appeal when it considers the 35 day deadline for filing permit appeals that is found in Section 40(a)(1) of the Environmental Protection Act. (Ill.Rev.Stat. 1991, ch. 111½, par. 1040(a)(1).) However, in order to save the Board's and parties' resources and time, and in order to protect Douglas' appeal rights in the event that the Agency fails to issue a corrected permit, the Board grants a 45 day stay in this case. Any request for an additional stay must

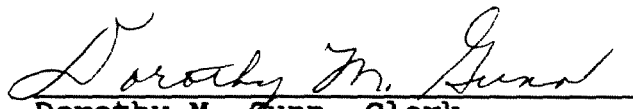
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be accompanied by a corresponding waiver of the Board's statutory decision deadline. In the event that the Agency places objectionable conditions on the corrected permit, we note that Douglas can file a permit appeal after the Agency issues that permit. (See Reichhold.)

IT IS SO ORDERED.

Board Member B. Forcade abstained.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 1st day of October, 1992, by a vote of 6-0.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board