

ILLINOIS POLLUTION CONTROL BOARD
September 12, 1991

GENERAL ELECTRIC COMPANY,)
)
Petitioner,)
)
v.) PCB 90-65
) (Permit Appeal)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)
)

ORDER OF THE BOARD (by B. Forcade):

This matter is before the Board on the August 15, 1991 agreed motion to dismiss filed by General Electric Company ("GE") and the Illinois Environmental Protection Agency ("Agency"). The parties request that the Board dismiss this proceeding without hearing or an adjudication of the issues therein, but for the reasons and upon the conditions stated in the Agreement. The Agreement sets forth detailed technical determinations and proscribes certain actions by the Agency and GE with respect to clean closure of this RCRA container storage area.

The Board has previously articulated its reluctance to accept settlement agreements in both permit appeals and variances. As it pertains to variances, the Board stated:

As a general matter, the Board has held that stipulations and settlement agreements have only limited propriety in variance proceedings, being appropriate only to the extent that they may serve to convey to the Board those factors upon which the parties find agreement (e.g, Rowe Foundry & Machine Company v. IEPA, PCB 81-49, 51 PCB 89). Conversely, stipulations to issues which are the sole province of the trier of fact (the Board) are not appropriate (e.g., Olin Corporation v. IEPA, PCB 81-117, 45 PCB 415). Such issues include findings of arbitrary and unreasonable hardship (Id.) and, as is the case here, findings of whether Board rules are applicable to the particular circumstances faced by a petitioner (See Container Corporation of America v. IEPA, PCB 87-183, Interim Order, June 2, 1988). (R.R. Donnelley & Sons, v. IEPA, PCB 88-79, February 23, 1989).

As it pertains to permit appeals, the Board stated:

The Board has difficulty in dealing with settlements in permit appeal cases which involve Agency issuance of negotiated permits containing conditions for which no record exists "setting out sufficient technical facts and legal assertions to allow the Board to exercise its independent judgement and to make proper findings of fact and conclusions of law." Caterpillar Tractor Co. v. IEPA, PCB 79-180, Interim Order, June 2, 1983, p. 1-2. The Board has not issued Orders incorporating the terms of such stipulations as the Board does in enforcement cases. The Board has issued Orders dismissing the appeal and allowing ratification of a "voidable permit, e.g., Caterpillar, supra, Final Order, June 14, 1982; an Order simply dismissing the appeal, Village of Sauget v. IEPA, PCB 79-87, July 19, 1984; and an Order remanding the permit to the Agency, Caterpillar Tractor Co. v. IEPA, PCB 83-58, March 7, 1985. (Electric Energy v. IEPA, PCB 85-14, June 13, 1985).

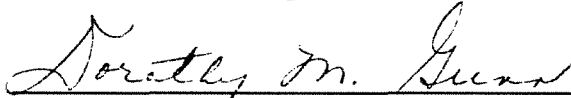
See Also, Marathon Oil Company v. IEPA, PCB 83-26, November 21, 1985; W.R. Grace and Co. v. IEPA, PCB 89-193, November 2, 1989; and Motorola v. IEPA, PCB 89-193, October 25, 1990.

Where, as here, the parties seek to implement a Settlement Agreement containing both technical and legal conditions the above stated concerns are relevant. This is especially true in a RCRA proceeding in which no hearing is to be held. Accordingly, the Board will adopt a simple voluntary dismissal Order. That dismissal will not adopt the terms and conditions of the Settlement Agreement. If the parties wish another course of action, they may file a motion for reconsideration demonstrating how that action is consistent with the concerns expressed above.

This matter is dismissed.

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 12th day of September, 1991, by a vote of 7-0.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board