

ILLINOIS POLLUTION CONTROL BOARD  
June 7, 1990

THE UNO-VEN COMPANY, )  
 )  
 Petitioner, )  
 )  
 v. ) PCB 90-99  
 ) (Permit-Appeal)  
 )  
 ILLINOIS ENVIRONMENTAL )  
 PROTECTION AGENCY, )  
 )  
 Respondent. )

ORDER OF THE BOARD (by B. Forcade):

On June 4, 1990, the Agency filed a motion, supported by affidavit, to dismiss this permit appeal filed on May 14, 1990. The Agency seeks dismissal on the grounds that on May 1, 1990 petitioner had requested the Agency to reconsider its April 25, 1990 denial, and that the denial is in fact under reconsideration by the Agency. On June 4, petitioner filed a response indicating uncertainty as to the effect of dismissal of this action.

If this matter is under reconsideration by the Agency, the Board must decline to accept this matter for hearing. Otherwise, the question of how the laws of the State of Illinois apply to the facts in this permit application would be pending before both the Agency and the Board at the same time. The Board would dismiss such a matter for want of jurisdiction. This is consistent with earlier decisions in which the Board found that it lacked jurisdiction to hear an appeal where the Agency had the matter under reconsideration. See, e.g., Reichhold Chemicals, Inc. v. IEPA, PCB 89-94, June 8, 1989; Reichhold Chemicals, Inc. v. IEPA, PCB 89-148, November 8, 1989. See, also, Alburn, Inc. v. IEPA, PCB 81-23, March 19, 1981; Caterpillar Tractor Company v. IEPA, PCB 79-180, July 14, 1983; Joliet Sand and Gravel Co. v. IEPA, PCB 87-55, June 10, 1987; and IBP, Inc. v. IEPA, PCB 88-98, September 13, 1989.

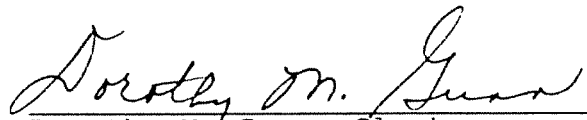
Concerning the effects of dismissal, in response to petitioner's query, the Board observes that dismissal of this prematurely filed action for want of jurisdiction does not prejudice petitioner's ability to timely appeal the Agency's final decision on its permit application. Petitioner also seeks a declaration that "the continued operation of the subject emission source places the Petitioner in no greater jeopardy for operating an air pollution source without a permit"; the Board is unclear as to exactly what information Petitioner is seeking.

Accordingly, the Board makes no findings/holdings on this question.

For the foregoing reasons, the Agency's motion to dismiss this action for want of jurisdiction is hereby granted.

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 7<sup>th</sup> day of June, 1990, by a vote of 7-0.

  
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Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board