

ILLINOIS POLLUTION CONTROL BOARD  
August 31, 1989

IBP, INC., )  
 )  
 Petitioner, )  
 )  
 v. ) PCB 89-128  
 )  
 ILLINOIS ENVIRONMENTAL )  
 PROTECTION AGENCY, )  
 )  
 Respondent. )

ORDER OF THE BOARD (by J. Anderson):

On August 21, 1989, the Illinois Environmental Protection Agency (Agency) filed a Motion to Dismiss and a Motion for Extension of Time to file the permit appeal record. IBP, Inc. (IBP) filed a Response to the Agency's Motion to Dismiss on August 25, 1989.

The Agency requests that the Board dismiss IBP's permit appeal because the time to appeal has elapsed or, in the alternative, because the Agency did not make a final decision in this matter and therefore the issue is not ripe for appeal. The Agency also requests an extension of time in which to file the permit record until the Board rules on the motion to dismiss. According to the Agency, granting this extension could prevent the needless expenditure of State resources.

In response, IBP requests that the Board deny the Agency's Motion to Dismiss or, in the alternative, that the Board hold hearings upon the factual assertions made by the Agency in its motion prior to the Board's decision. IBP asserts that the Agency's motion states facts which are not verified in accordance with 35 Ill. Adm. Code 101.242(a).

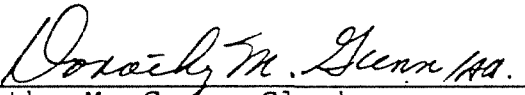
While hearings on these filings are not necessary, the Board hereby orders the parties to verify any factual assertions made by these filings through the submission of affidavits, to the extent that such affidavits have not already been provided to the Board. Additionally, the parties shall address Caterpillar Tractor Co. v. Illinois Environmental Protection Agency, PCB 83-86 (October 19, 1983), discussing that case's relevance to the situation at hand. See also, Reichold Chemicals, Inc. v. Illinois Environmental Protection Agency, PCB 89-94 (June 8, 1989) (permit appeal dismissed due to request for reconsideration of permit pending before the Agency). Responses to this Order shall be filed with the Board by September 21, 1989.

The Agency's Motion for Extension of Time to file the permit appeal record is hereby granted.

Additionally, IBP's August 25, 1989 motion to amend its petition is 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 31<sup>st</sup> day of August, 1989, by a vote of 6-0.

  
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Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board