

ILLINOIS POLLUTION CONTROL BOARD  
September 13, 1989

KATHY WESTERN and )  
JEFFREY WESTERN, )  
 )  
Complainants, )  
 )  
v. ) PCB 89-44  
 ) (Enforcement)  
MOLINE CORPORATION, )  
 )  
Respondent. )

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ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
 )  
Complainant, )  
 )  
v. ) PCB 89-87  
 ) (Enforcement)  
MOLINE CORPORATION, )  
 )  
Respondent. )

ORDER OF THE BOARD (by J. Theodore Meyer):

This matter is before the Board on Moline Corporation's (Moline) motion to bifurcate, filed on September 1, 1989. Complainant the Illinois Environmental Protection Agency (Agency) filed its response to the motion on September 8, 1989. Moline's motion was directed to the hearing officer. On September 11, the hearing officer referred the motion to the Board for decision.

Moline's motion asks that this consolidated enforcement proceeding be bifurcated into two phases. The first phase would deal with liability, and if necessary, the second phase would deal with remedy, Moline contends that bifurcation would aid in the efficient administration of this case, and that adjudication of remedy at this point in the proceedings is premature because the complainants have not made any specific demands for relief or remedy. Moline also argues that three of the factors which the Board must consider pursuant to Section 33(c) of the Environmental Protection Act (Act), Ill. Rev. Stat. 1987, ch. 111- $\frac{1}{2}$ , par. 1033(c), are relevant to the issue of liability,

while the other factors are relevant to the issue of remedy.<sup>1</sup> Thus, Moline maintains that bifurcation would best serve the interests of economy and efficiency for the parties.

In response, the Agency contends that there is no need to bifurcate this proceeding. The Agency states that although neither it nor complainants the Westerns have requested specific remedial measures, both the Agency and the Westerns have asked that the Board order Moline to cease and desist from violating the Act and Board regulations governing air and noise emissions. Additionally, the Agency has asked the Board to order Moline to implement a noise reduction program. The Agency states that a finding of liability is all that is necessary for the Board to order Moline to study and implement appropriate remedial measures for both air and noise emissions. The Agency also argues that contrary to Moline's assertions, all six section 33(c) factors have a bearing upon the Board's determination of the reasonableness of the air and noise emissions, and thus all six factors are relevant in determining liability. The Agency maintains that bifurcation will not simplify or expedite hearing, and is therefore unnecessary.

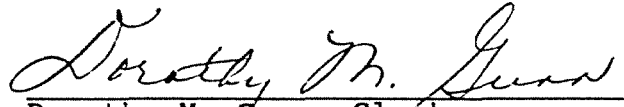
Moline's motion to bifurcate is denied. The Board agrees with the Agency that all six section 33(c) factors have a bearing upon the reasonableness of the emissions, and that therefore all six factors are relevant to the issue of liability. (This issue may be better framed as the question of violation instead of liability.) Moline's request seems to center on the convenience of the parties, while ignoring administrative convenience and expeditious determination of all issues in the proceeding. Because the Board's hearing officer does not make any rulings on the substance of the case, to bifurcate this proceeding would result in holding a hearing and receiving briefs on the issue of violation. The Board would then make its determination on that issue. If the Board finds any violation, the proceeding would then continue on the issue of remedy. This is an unnecessarily circuitous course, especially where all six 33(c) factors are relevant to the determination of violation. The Board sees no reason why the proceeding should be bifurcated, when all evidence and arguments can be made before the Board rules upon the complaints. The Board believes that bifurcating this proceeding would only result in delay in the ultimate determination of all issues. Moline's motion is denied.

IT IS SO ORDERED.

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<sup>1</sup>The Board notes that although Moline states that there are five 33(c) factors, there are in fact six factors listed in that section.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 15<sup>th</sup> day of September 1989, by a vote of 7-0.

  
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Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board