

ILLINOIS POLLUTION CONTROL BOARD
February 2, 1989

VILLAGE OF BLOOMINGDALE,)
)
 Petitioner,)
)
 v.) PCB 85-25
)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Respondent.)

ORDER OF THE BOARD (by J. Marlin):

On January 11, 1989, the Illinois Environmental Protection Agency (Agency) filed a Motion to Dismiss the Village of Bloomingdale's (Bloomingdale) permit appeal which is the subject of this proceeding. The appeal challenges two conditions of Bloomingdale's National Pollutant Discharge Elimination System (NPDES) permit concerning ammonia nitrogen effluent standards. In its motion, the Agency states that Bloomingdale is in "substantial compliance" with the ammonia nitrogen limits and that the appeal is moot as a result.

On January 27, 1989, the Board received a copy of a letter dated January 25, 1987, which was sent to counsel for Bloomingdale by counsel for the Agency. That letter states:

This letter memorializes our conversation earlier today wherein you stated your position that you would not oppose the Agency's Motion to Dismiss if you could have assurances that the Agency would not pursue enforcement action against Bloomingdale for missed interim deadlines in their ammonia nitrogen compliance plan. As Bloomingdale met the final, July, 1988, deadline, and is now in substantial compliance with NH₃ limits, I can assure you that further action on missed interim deadlines will not be pursued, either by this Agency or by the Attorney General's Office.

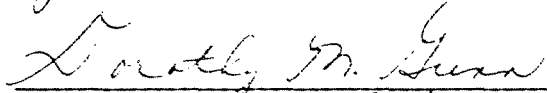
Bloomingdale filed a Motion for Leave to File Response Instanter as well as a Response on January 30, 1989. The motion to file a response instanter is hereby granted. In the Response, Bloomingdale agrees that a permit appeal is now moot. However, Bloomingdale expressly states that it reaches its conclusion in reliance upon "the representations made by the Agency in the letter to the Village [Bloomingdale] dated January 25, 1989...."

The Agency's motion is granted, and this matter is dismissed. The Board notes that it is not bound by a unilateral assurance, given by the Agency, that neither the Agency nor the Attorney General will bring an enforcement action concerning a particular requirement. Similarly, such an assurance does not preclude an enforcement action brought by a member of the public.

Section 41 of the Environmental Protection Act, Ill. Rev. Stat. 1985 ch. 111 $\frac{1}{2}$ par. 1041, provides for appeal of final Orders of the Board within 35 days. The Rules of the Supreme Court of Illinois establish filing requirements.

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 2nd day of February, 1989, by a vote of 7-0.



 Dorothy M. Gunn, Clerk
 Illinois Pollution Control Board