ILLINOIS POLLUTION CONTROL BOARD May 14, 1987

PCB 86-187

THE NEW JERSEY ZINC CO.,) Petitioner,) v.) ILLINOIS ENVIRONMENTAL) PROTECTION AGENCY,)

Respondent.

ORDER OF THE BOARD (by B. Forcade):

On May 4, 1987, New Jersey Zinc Company (New Jersey Zinc) filed a motion to dispense with hearing. On May 6, 1987, the Illinois Environmental Protection Agency (Agency) filed an answer to motion which supported cancellation of hearing. The motion to dispense with hearing is denied.

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New Jersey Zinc's October 24, 1986, petition for variance and March 6, 1987, amended petition for variance both specifically requested hearing. Consequently, the Board authorized hearing in this matter. When a matter is authorized for hearing, that determination is generally circulated to the public in the Board's publication, the <u>Environmental Register</u>. In addition, members of the public attend Board meetings or receive abstracts of Board activities from private services. As a result of this information circulation, the Board is unable to determine who, if anyone, may be relying on the authorization for hearing and may wish to attend such hearing. For those reasons, the Board discourages cancellation of already authorized hearings. Prior difficulties with public opposition to cancellation of authorized hearings has demonstrated the wisdom of this approach.

The Board does not require hearings in all proceedings. Specifically, the Board's procedural rules allow variance petitions to be resolved in certain circumstances without hearings. The Board's procedural rules also specifically allow petitioners for variance to request that a hearing be held after the petitioner has reviewed the Agency's recommendation. 35 Ill. Adm. Code 104.181(b). In the present motion, New Jersey Zinc's motion to dispense with hearing appears to be prompted by agreement with the Agency's recommendation (Motion, 4) The more appropriate course of action would have been to waive hearing in the original pleadings and file an amended petition which requested hearing if a disagreement with the Agency's recommendation surfaced. In that way, no member of the public could be misled about whether hearing would take place.

For the foregoing reasons, the motion to dispense with

hearing is denied and this matter will proceed to hearing.

IT IS SO ORDERED

Board Member R. Flemal dissented.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the _____ day of _____, 1987, by a vote of $5-/_$.

Dorothy M. Gunn, Clerk Illinois Pollution Control Board