

ILLINOIS POLLUTION CONTROL BOARD  
April 24, 1986

MONSANTO COMPANY, )  
 )  
 ) Petitioner, )  
 )  
 ) v. ) PCB 86-63  
 )  
 ) ILLINOIS ENVIRONMENTAL )  
 ) PROTECTION AGENCY, AND UNITED )  
 ) STATES ENVIRONMENTAL )  
 ) PROTECTION AGENCY, )  
 )  
 ) Respondents. )

ORDER OF THE BOARD (by B. Forcade):

On April 21, 1986, the Monsanto Company filed a Permit Appeal. This matter is accepted for hearing. Hearing must be scheduled within 14 days of the date of this Order and completed within 60 days of the date of this Order. The hearing officer shall inform the Clerk of the Board of the time and location of the hearing at least 40 days in advance of hearing so that public notice of hearing may be published. After hearing, the hearing officer shall submit an exhibit list, written schedule for submission of briefs if any and all actual exhibits to the Board within 5 days of the hearing. Any briefing schedule shall provide for final filings as expeditiously as possible and in no event later than 70 days from the date of this Order.

If after appropriate consultation with the parties, the parties fail to provide an acceptable hearing date or if after an attempt the hearing officer is unable to consult with the parties, the hearing officer shall unilaterally set a hearing date in conformance with the schedule above. This schedule will only provide the Board a very short time period to deliberate and reach a decision before the due date. The hearing officer and the parties are encouraged to expedite this proceeding as much as possible.

The hearing officer may extend this schedule only on a waiver of the decision deadline by the petitioner and only for the equivalent or fewer number of days that the decision deadline is waived. Such waivers must be provided in writing to the Clerk of the Board. Any waiver must be an "open waiver" or a waiver of decision until a date certain. Any waiver shall extend the time deadline of Section 105.102 regarding filing the Agency record by the equivalent number of days, but in any circumstance the record must be filed at least 10 days before the hearing.

Because of requirements regarding the publication of notice of hearing, no scheduled hearing may be cancelled unless the petitioner provides an open waiver or a waiver to a date at least 75 days beyond the date of the motion to cancel hearing. This should allow ample time for the Board to republish notice of hearing and receive transcripts from the hearing before the due date. Any order by the hearing officer granting cancellation of hearing shall include a new hearing date at least 40 days in the future and at least 30 days prior to the new due date and the Clerk of the Board shall be promptly informed of the new schedule.

Because this proceeding is the type for which the Illinois Environmental Protection Act sets a very short statutory deadline for decisionmaking, absent a waiver, the Board will grant extensions or modifications only in unusual circumstances. Any such motion must set forth an alternative schedule for notice, hearing, and final submissions, as well as the deadline for decision, including response time to such a motion. However, no such motion shall negate the obligation of the hearing officer to set a date pursuant to the second paragraph of this Order.

The parties are ordered to provide briefs to the Board not later than May 15, 1986, on whether the Board has jurisdiction to join USEPA as a necessary party in an adjudicatory proceeding.

Additionally, the parties are requested to provide comments on whether PCB 86-62 and 63 should be consolidated into one proceeding

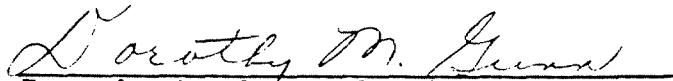
Additionally, the parties are ordered to provide briefs to the Board not later than May 15, 1986, on whether the Board has authority to entertain this Permit Appeal. The parties attention is directed to Landfill, Inc. v. Pollution Control Board, 74 Ill. 2d 541 (1978); Village of Gilberts v. Holiday Park, PCB 85-96 (August 15, 1985); and 35 Ill. Adm. Code 105.102(b)(3).

The motion by Monsanto for leave to appear is granted.

IT IS SO ORDERED

Chairman J.D. Dumelle and Board Member J. Anderson dissented.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 24<sup>th</sup> day of April, 1986, by a vote of 5-2.

  
Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board