

ILLINOIS POLLUTION CONTROL BOARD

November 7, 1996

IN MATTER OF: )  
)  
PETITION OF CHEMETCO, INC. FOR ) AS 97-2  
ADJUSTED STANDARD FROM 35 ILL. ) (Enforcement - Land, RCRA)  
ADMIN. CODE 720.131 (a) & (c) )  
)  
)

ORDER OF THE BOARD (by K. M. Hennessey):

This case involves the petition of Chemetco, Inc. ("Chemetco") for an adjusted standard under 35 Ill. Adm. Code 720.131 (a) and (c). In the petition, Chemetco seeks a solid waste determination regarding 40,000 tons of zinc oxide material currently stored at Chemetco's facility in Hartford, Illinois.

Now pending before the Board are various procedural motions: "Chemetco's Request that the 'Illinois EPA's Request for Extension of Time to Respond to Petitioner's Amendment (SIC) to its Petition for Determining Whether a Material is a Solid Waste be Denied'" ("Request") and the Illinois Environmental Protection Agency's "Motion to Strike." By this order, the Board denies the Agency's motion to strike. The Board accepts Chemetco's request as a motion to reconsider the Board's order of October 17, 1996, which granted the Agency time to file a response to Chemetco's "Amended Petition." The Board also reconsiders its October 17, 1996 order.

These motions arose out of the reply in support of the petition that Chemetco filed on September 19, 1996. Although Chemetco filed a reply, not an amended petition, the Agency filed a "Request for Extension of Time to Respond to Petitioner's Amendment to its Petition for Determining Whether a Material is a Solid Waste" on October 3, 1996. Chemetco did not respond to the Agency's request for extension within the seven days allowed by 35 Ill. Adm. Code 101.241. On October 17, 1996, the Board granted the Agency's request for extension. Under that order, the Agency has until January 6, 1997 to file its response.

On October 18, 1996, however, Chemetco filed the request now before the Board, in which Chemetco asks that the Board deny the Agency's request for extension. In its request, Chemetco argues that its September 19 filing was a reply to the Agency's recommendation, not an amended petition as the Agency claimed in its request for extension. Chemetco further argues that the Agency's request for extension would delay the hearing in this matter. On October 23, 1996, the Agency filed a motion to strike Chemetco's request on the grounds that it was not timely filed.

Although Chemetco's request was not timely filed as a response to the Agency's request for extension, the Board will consider it as a motion to reconsider the Board's October 17, 1996 order. The Board therefore denies the Agency's motion to strike. The Board also reconsiders and modifies its October 17, 1996 order. As Chemetco correctly points out, it did not file an amended petition, but a reply to the Agency's recommendation under 35 Ill. Adm. Code 106.414. As a result, there is no amended petition to which the Agency may respond.

The Board notes, however, that the Agency is entitled to file an amended recommendation whether or not the petitioner files an amended petition. (35 Ill. Adm. Code 106.715.) The Agency may do so at any time prior to the close of the hearing that is to be held in this matter. Therefore, the Board's order of October 17, 1996 is modified to provide that the Agency may file an amended recommendation, not a response to an amended petition, at any time prior to the close of the hearing on this matter.

The Board notes that no hearing has yet been scheduled and that under a previous order of the Board (dated September 19, 1996), the Clerk of the Board must be given at least 40 days notice of the date of the hearing. Thus, the Agency should have ample time to file an amended recommendation.

This matter should proceed to hearing consistent with this order.

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 \_\_\_\_\_ day of \_\_\_\_\_, 1996, by a vote of \_\_\_\_\_.

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Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board