

ILLINOIS POLLUTION CONTROL BOARD
November 3, 1994

IN THE MATTER OF:)
)
PETITION OF LONE STAR) AS 94-15
INDUSTRIES, INC. FOR) (Adjusted Standard)
ADJUSTED STANDARD FROM)
35 ILL. ADM. CODE 811.320(d))
(Establishment of Groundwater)
Background Concentrations))

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

This matter is before the Board on several filings. On October 4, 1994, Lone Star Industries, Inc. filed a petition for adjusted standard regarding its Oglesby, Illinois facility, located in LaSalle County, Illinois. Lone Star also filed a motion for leave to be relieved of the requirements of 35 Ill. Adm. Code 101.106, regarding incorporation of prior proceedings. Lone Star asks to be relieved of the requirement that it file multiple copies of the record in its previous variance proceeding, docketed as PCB 92-134. That motion is granted in part. Lone Star shall file, no later than December 2, 1994, one copy of all material which it wishes to incorporate. Finally, on October 28, 1994, the Illinois Environmental Protection Agency (Agency) filed a motion for extension of time to file its response to the petition for adjusted standard. That motion for extension is granted, and the Agency's response is now due on December 2, 1994.

Section 28.1 of the Act authorizes the Board to dismiss the adjusted standard petition at any time if it determines that the petition is duplicative or frivolous, or that the petitioner is not pursuing disposition of the petition in a timely manner. In addition, Board regulations at 35 Ill. Adm. Code 106.902 (a) authorize dismissal if the petition is deficient with respect to the requirements of 35 Ill. Adm. Code Sections 106.705, 106.706, 106.710 and 106.712.

Section 28.1 also requires the Board to conduct a public hearing if the Board, in its discretion, determines a hearing would be advisable or if the Board receives a request for hearing from any person within 21 days of publication of public notice of the filing of the petition.

An action before the Board is duplicative if the matter is identical or substantially similar to one brought in another forum (Brandle v. Ropp, PCB 85-68, 64 PCB 263 (1985)). An action before the Board is frivolous if it fails to state a cause of action upon which relief can be granted by the Board (Citizens

for a Better Environment v. Reynolds Metals Co., PCB 73-173, 8 PCB 46 (1973)). A petition is deficient with respect to 35 Ill. Adm. Code 106.705, 106.706, 106.710 and 106.712 if it omits any required information or lacks any required supporting affidavits or proofs as specified in those sections.

There is no evidence before the Board to indicate this matter is identical or substantially similar to any matter brought in another forum, nor is there any evidence that the Board cannot grant the relief requested. At this time, therefore, the Board finds that the complaint is neither duplicative nor frivolous. Since this action has just been filed, there is also no evidence before the Board that petitioner is not pursuing timely disposition of the petition. Additionally, at this time there is no evidence before the Board that the petition is deficient with respect to 35 Ill. Adm. Code Sections 106.705, 106.706, 106.710 and 106.712.

Finally, on October 24, 1994, the Board received a request for public hearing from Robert J. Ribolzi, president of Area Citizens Regarding Environmental Safety (A.C.R.E.S.). Accordingly, this matter shall proceed to hearing.

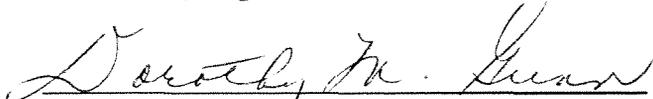
This is a type of case for which the Act prescribes no deadline for decision, although as noted the Act requires the petitioner to timely pursue disposition of the petition. Therefore, hearing must be scheduled and completed in a timely manner, consistent with Board practices and 35 Ill. Adm. Code Part 101 and Part 106, Subpart G. The Board will assign a hearing officer to conduct hearings consistent with this order, and the Clerk of the Board shall promptly issue appropriate directions to that hearing officer.

The assigned 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, a statement regarding credibility of witnesses and all actual exhibits to the Board within five days of the hearing. Any briefing schedule shall provide for final filings as expeditiously as possible.

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. The hearing officer and the parties are encouraged to expedite this proceeding as much as possible.

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 3rd day of November, 1994, by a vote of 6-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board