

ILLINOIS POLLUTION CONTROL BOARD  
November 16, 1995

HORSEHEAD RESOURCE )  
DEVELOPMENT COMPANY, INC., )  
 )  
Petitioner, )  
 )  
v. ) PCB 96-101  
 ) (Permit Appeal-RCRA)  
 )  
 )  
ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
 )  
Respondent. )

ORDER OF THE BOARD (by C.A. Manning):

On November 9, 1995, Horsehead Resource Development Company, Inc.(Horsehead) filed a notice of extension of the 35-day appeal period pursuant to Section 40 of the Act, relating to a October 6, 1995, Illinois Environmental Protection Agency (Agency) final permit application determination. The Agency on November 14, 1995 filed its agreement to the extension. The Agency requested the extension "to January 4, 1996, or any other date not more than a total of 90 days from the date of the Agency's final determination".

P.A. 88-690 (SB1724) effective January 24, 1995, amends Section 40(a)(1), which governs the permit appeal process, to provide:

the 35-day period for petitioning for a hearing may be extended for a period of time not to exceed 90 days by written notice provided to the Board from the applicant and the Agency within the initial appeal period.

The extension is granted for the purpose of resolving any potential issue regarding the timeliness of the permit appeal being filed.

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Notwithstanding its extension request, on November 13, 1995, Horsehead filed a petition for review of permit regarding its facility, located in Chicago, Cook County, Illinois. This permit appeal in essence supersedes the extension. = Therefore, this matter is accepted for hearing.

Along with its petition Horsehead filed a motion for stay of the permit modification for which it is seeking review. The Board will reserve ruling on this motion, as the time in which the Agency may reply has not elapsed.

The hearing must be scheduled and completed in a timely manner, consistent with Board practices and the applicable statutory decision deadline, or the decision deadline as extended by a waiver (petitioner may file a waiver of the statutory decision deadline pursuant to 35 Ill. Adm. Code 101.105). 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 assigned 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 and, in time-limited cases, no later than 30 days prior to the decision due date, which is the final regularly scheduled Board meeting date on or before the statutory or deferred decision deadline. Absent any future waivers of the decision deadline, the statutory decision deadline is now March 12, 1996 (120 days from November 13, 1995); the Board meeting immediately preceding the due date is scheduled for March 7, 1996.

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. The Board notes that Board rules (35 Ill. Adm. Code 105.102) require the Agency to file the entire Agency record of the permit application within 14 days of notice of the petition.

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 \_\_\_\_\_, 1995, by a vote of \_\_\_.

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Dorothy M. Gunn, Clerk  
Illinois Pollution

Control Board