

ILLINOIS POLLUTION CONTROL BOARD

May 17, 2001

SIERRA CLUB, FRIENDS OF THE FOX)	
RIVER and PRAIRIE RIVERS NETWORK,)	
)	
Petitioners,)	
)	
v.)	PCB 01-148
)	(Permit Appeal – NPDES)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY and FOX RIVER)	
WATER RECLAMATION DISTRICT,)	
)	
Respondents.)	

ORDER OF THE BOARD (by G.T. Girard):

On May 3, 2001, the Sierra Club, Friends of the Fox River, and Prairie Rivers Network filed a petition to contest the issuance of a National Pollutant Discharge Elimination System (NPDES) permit pursuant to Section 40(e) of the Environmental Protection Act (Act) (415 ILCS 5/40(e) (1998)). The permit in question was issued by the Illinois Environmental Protection Agency (Agency) on March 30, 2001, to the Fox River Water Reclamation District for its West Sewage Treatment Plant in Elgin, Kane County, Illinois.

A third-party appeal of an NPDES permit is authorized by Section 40(e) of the Act. 415 ILCS 5/40(e) (1998). The Board's procedural rules state that "[i]f the Agency grants or denies a permit under subsection (b) of Section 39 of the Act, a third party, other than the permit applicant or Agency, may petition the Board for a hearing to contest the decision of the Agency (415 ILCS 5/40(e)(1))." 35 Ill. Adm. Code 105.204(b).

Section 40(e)(2) requires that the petition contains "a demonstration that the petitioner raised the issues contained within the petition during the public notice period or during the public hearing of the NPDES permit application, if a public hearing was held, and a demonstration that the petitioner is so situated as to be affected by the permitted facility." 415 ILCS 5/40(e)(2). Further, Section 40(e)(3) provides that if the Board determines that the petition is not duplicitous or frivolous and contains a satisfactory demonstration under Section 40(e)(2), the Board shall "hear the petition." 415 ILCS 5/40(e)(3).

Petitioners appeared at and gave testimony on the permit at a public hearing held on May 16, 2000, at the Elgin City Council Chambers and presented written comments. Petitioners raised legal and scientific issues regarding flaws in the draft permit. The petition also states that petitioner will be affected adversely when pollution discharged under the permit causes or contributes to the creation of offensive conditions in the Fox and Illinois Rivers.

The Board finds that the petition is neither duplicitous nor frivolous and that the petition contains a satisfactory demonstration under Section 40(e)(2) of the Act. This matter is accepted for hearing. The hearing in this matter must be scheduled and completed in a timely manner, consistent with Board practices, and the applicable statutory decision deadline (set out in Section 40(a)(3) of the Act), or the decision deadline as extended by a waiver.

As the Board noted in McHenry County Defenders, Inc. v. IEPA (August 6, 1998), PCB 98-173, slip op. at 4-5, the Board has construed the Act and Section 40(e) as giving the person who had requested the permit: (1) the right to a decision within the applicable statutory time frame (now 120 days); and (2) the right to waive (extend) the decision period. Fox River Water Reclamation District, the permit applicant, is the party with the right to a decision within 120 days and is the only party with the right to waive the decision deadline. The result is that failure of this Board to act within the 120 days would allow the permit applicant, Fox River Water Reclamation District, to pursue an appellate court order as detailed in Section 40(a)(3) of the Act.

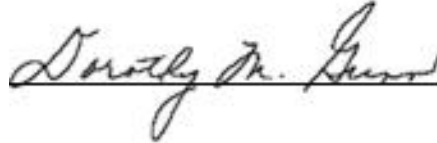
The Board will assign a hearing officer to conduct hearings consistent with this order and the Clerk of the Board will promptly issue appropriate directions to that assigned hearing officer. The assigned hearing officer must inform the Clerk of the Board of the time and location of the hearing at least 40 days in advance of hearing so that a 30-day public notice of hearing may be published. After hearing, the hearing officer must submit an exhibit list, a statement regarding credibility of witnesses, and all actual exhibits to the Board within five days after the hearing.

Any briefing schedule must provide for final filings as expeditiously as possible. Absent any future waivers of the decision deadline, the statutory decision deadline is now August 31, 2001, (120 days from May 3, 2001). The Board meeting immediately preceding the decision deadline is scheduled for August 23, 2001.

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 all of the parties, the hearing officer shall unilaterally set a hearing date. 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 17th day of May 2001 by a vote of 7-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", written over a horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board