

ILLINOIS POLLUTION CONTROL BOARD
August 3, 1995

C & S RECYCLING, INC.,)
)
 Petitioner,)
)
 v.) PCB 95-100
) (Permit Appeal - Land)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Respondent.)

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

On June 9, 1995 C & S Recycling, Inc. (C&S) filed a document captioned "Appeal from denial of permit for a transfer station", however the filing was titled "Petition for a Hearing and/or Variance". By order of June 22, 1995 the Board directed C&S to file an amended petition which clarified whether it was seeking variance relief pursuant to Section 35 of the Illinois Environmental Protection Act (Act) (415 ILCS 5/35) or variance from a statutory requirement in a permit appeal pursuant to Section 40 of the Act (415 ILCS 5/40), and which satisfied the informational requirements of 35 Ill. Adm. Code 104 or 105 respectively. Until an amended petition was filed, the Board treated this matter as a Section 40 permit appeal.

C&S filed an Amended Petition For Permit Appeal and Request for Hearing on July 28, 1995. The permit appeal refers to the Agency's February 10, 1995 denial of application of a permit for a municipal waste transfer station located in Chicago, Illinois.

C&S's Amended Petition For Permit Appeal satisfies the informational requirements of the Board's procedural rules. (See 35 Ill. Adm. Code 105.) However, the amended petition contains language that is inappropriate for a Section 40 permit appeal. Therefore on the Board's own motion, it will strike paragraph 8, section 1, which states that "Petitioner seeks a hearing before the Board based on the following grounds: Section 22.14, as amended, creates an arbitrary and unreasonable hardship upon Petitioner". The arbitrary and unreasonable hardship standard is inapplicable to a Section 40 permit appeal, but rather applies to a Section 35 petition for variance. As explained more fully in the Board's June 22, 1995 order, the Board cannot grant a variance from a statutory requirement in a permit appeal pursuant to Section 40 of the Act (415 ILCS 5/40) and 35 Ill. Adm. Code 105.

With this deletion, the Board hereby accepts petitioner's Amended Petition for Permit Appeal and sets this matter for hearing. The Board's 120 day statutory decision deadline was restarted with the filing of the amended permit appeal. Therefore absent any future waivers of the decision deadline, and

as explained in the Board's June 22, 1995 order, the Board's statutory decision deadline is now November 25, 1995; the Board meeting immediately preceding the due date is scheduled for November 16, 1995.

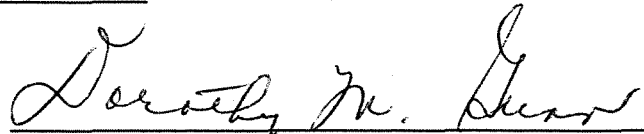
The hearing must be scheduled and completed in a timely manner, consistent with Board practices and the applicable statutory decision deadline, or the decision deadline as extended by a waiver (petitioner may file a waiver of the statutory decision deadline pursuant to 35 Ill. Adm. Code 101.105). The 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 the assigned hearing officer consistent with this order.

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.

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 3rd day of August, 1995, by a vote of 5-0.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board