

ILLINOIS POLLUTION CONTROL BOARD
October 20, 1994

ATKINSON LANDFILL COMPANY, INC.,)
)
 Petitioner,)
)
 v.) PCB 94-259
) (Variance)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
 Respondent.)

ORDER OF THE BOARD (by R.C. Flemal):

On October 13, 1994 the Board received a written objection to grant of variance. The written objection, which is filed by Carolyn Van Opdorp, is accompanied by a copy of a newspaper notice. That notice was published by the Illinois Environmental Protection Agency pursuant to Board procedural rule (see 35 Ill. Adm. Code 104.140(b)).

Ms. Van Opdorp's objection was apparently guided by the specific wording of the newspaper notice, which, among other matters, observes that "(I)f a written objection to the variance is received by ... [the Board] no later than twenty-one (21) days from the filing of the petition for variance, the Board *must* conduct a hearing on the petition" (emphasis added). This language differs from the hearing requirement set forth at Section 37(a) of the Environmental Protection Act (Act). Section 37(a) provides that a hearing is mandatory only when the written objection is filed "together with a written request for hearing" (415 ILCS 5/37(a)). Ms. Van Opdorp's written objection is not accompanied by a written request for hearing.

The Board also notes that the petition for variance was filed with the Board on September 20, 1994. To be timely, an objection had to have been filed on or before October 11, 1994, which was the 21st day after filing of the petition. Ms. Van Opdorp's written objection was filed with the Board on October 13, 1994, 23 days after the filing of the petition.

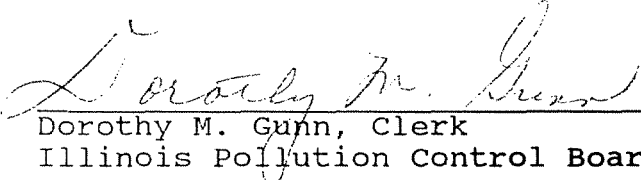
Based on these facts, the Board finds that the instant written objection is not sufficient to trigger a mandatory hearing. However, the Board has within its own discretion, pursuant to Section 37(a) of the Act, the authority to call a public hearing whenever the Board concludes that hearing would be advisable. The Board believes that a public hearing in this matter is advisable. Accordingly, the Board will set this matter for public hearing.

Interested persons are advised that this public hearing is for the sole and narrow purpose of obtaining testimony on the merits of Atkinson Landfill's request for an extension of the deadline for filing an application for a significant modification of its operating permit. The hearing officer is required to bar testimony on any issues not relevant to this variance request.

The hearing must be scheduled and completed in a timely manner, and will be conducted in accordance with 35 Ill. Adm. Code 102.Subpart J. 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.

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 20th day of October, 1994, by a vote of 5-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board