

ILLINOIS POLLUTION CONTROL BOARD  
November 18, 1993

J & M PLATING, INC.,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 93-73
	)	(Permit Appeal)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Respondent.	)	

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

This matter comes before the Board on a motion for summary judgment filed in this RCRA closure permit appeal on November 3, 1993 by J & M Plating, Inc. (J & M). The Illinois Environmental Protection Agency filed its response to the motion for summary judgment on November 12, 1993<sup>1</sup>.

In its motion J & M alleges that the Agency did not render a timely decision, and that therefore its permit should be deemed issued under the Environmental Protection Act at 415 ILCS 5/39. The Agency replies that the default provisions of Section 39(a) do not apply to RCRA permits, and in the alternative, that its decision was timely and requests the Board deny J & M's motion.

The Agency is correct that in Marathon Petroleum Company v. IEPA (July 27, 1989), PCB 88-179, 101 PCB 259, the Board found that "the default provisions in the last paragraph of Section 39(a) do not apply to RCRA permits." (*Id.* at 265.) The Board extensively addressed the reasons for this finding in that opinion and the Board today sees no reason to deviate from its prior determination on the issue.

On the alternative argument that the decision is timely, the motion for summary judgment indicates that the Agency received J & M's RCRA closure plan application on December 15, 1992. According to the computation of time provided in 35 Ill. Adm. Code 101.109, the 90th day after receipt of J & M's RCRA closure plan application was March 15, 1993. The Agency's approval of a modified RCRA closure plan for this site is dated March 15, 1993. (Exhibit C, motion for summary judgment.) The Agency's approval letter was mailed or delivered on or about March 15, 1993 as indicated by J & M's affidavit which states receipt of the Agency's approval letter occurred on March 16 or 17, 1993.

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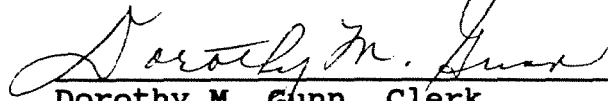
<sup>1</sup> The Agency's response is not accompanied by affidavit. Therefore, we will not consider any facts contained therein.

(Exhibit B, motion for summary judgment.) The Board notes that Section 39 of the Act does not require that the applicant be notified within 90 days of the Agency's receipt of the application, but rather that the Agency take final action within that 90 days.

Based on the above, the Board finds that the default provisions of the last paragraph of Section 39(a) do not apply to RCRA permits, and that even if the Marathon decision were not controlling here, the Agency rendered a timely decision on J & M's application. Therefore, the Board denies J & M's motion for summary judgment.

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 18<sup>th</sup> day of November, 1993, by a vote of 5-0.



Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board