

ILLINOIS POLLUTION CONTROL BOARD
March 25, 1993

WE SHRED IT, INC.,)	
)	
Petitioner,)	
)	
v.)	PCB 92-180
)	(Variance)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

ORDER OF THE BOARD (by J. Theodore Meyer):

This matter is before the Board on two filings. On March 15, 1993, petitioner We Shred It filed its third amended petition for variance. The petition is accepted. As the Board has previously noted, the filing of the amended petition restarted the time period for decision in this case.

The second filing pending before the Board is a March 2, 1993 motion to intervene filed by the County of Christian. The county alleges that We Shred It's waste tire disposal facility is located in Christian County, that We Shred It has not posted any financial assurance to ensure proper clean up of the waste tires presently on site, and that the county has received no formal commitment from the state that the state would assume the cost of closure and proper disposal of waste products located at the We Shred It site. The county contends that it is a timely applicant for intervention, and that it will or may be bound by an order or judgment in this action. Therefore, the county asks that it be allowed to "represent its interests and properly consider all evidence, exhibits and proposed dispositions, if any to be presented." (Motion at 2.) We Shred It has not filed a response to the county's motion to intervene.

The Board grants the county's motion to intervene. The county is so situated that it may be adversely affected by a final order of the Board. (35 Ill.Adm.Code 103.142, 104.141.)

The Board notes that We Shred It previously filed a waiver of hearing, along with an affidavit in support of the second amended petition. However, the third amended petition does not include an affidavit in support of that petition, nor does it waive hearing. Therefore, the Board must set this case for hearing.

Hearing must be scheduled within 14 days of the date of this order and completed within 60 days of the date of this order. The hearing officer shall inform the Clerk of the Board of the time and location of the hearing at least 40 days in advance of

0140-0219

hearing so that public notice of hearing may be published. After hearing, the hearing officer shall submit an exhibit list and all actual exhibits to the Board within 5 days of the hearing. Any briefing schedule shall provide for final filings as expeditiously as possible and in no event later than 70 days from the date of this order.

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. This schedule will only provide the Board a very short time period to deliberate and reach a decision before the due date. The hearing officer and the parties are encouraged to expedite this proceeding as much as possible.

Within 10 days of accepting this case, the hearing officer shall enter a hearing officer scheduling order governing completion of the record. That order shall set a date certain for each aspect of the case including: briefing schedule, hearing date(s), completion of discovery (if necessary) and pre-hearing conference (if necessary). The hearing officer scheduling order may be modified by entry of a complete new scheduling order conforming with the time requirements below.

The hearing officer may extend this schedule only on a waiver of the decision deadline by the petitioner and only for the equivalent or fewer number of days that the decision deadline is waived. Such waivers must be provided in writing to the Clerk of the Board. Any waiver must be an "open waiver" or a waiver of decision until a date certain. Any waiver shall extend the time deadline of Section 104.180 regarding filing the Agency recommendation by the equivalent number of days, but in any circumstance the recommendation must be filed at least 20 days before the hearing.

Because of requirements regarding the publication of notice of hearing, no scheduled hearing may be cancelled unless the petitioner provides an open waiver or a waiver to a date at least 120 days beyond the date of the motion to cancel hearing. This should allow ample time for the Board to republish notice of hearing and receive transcripts from the hearing before the due date. Any order by the hearing officer granting cancellation of hearing shall include a complete new scheduling order with a new hearing date at least 40 days in the future and at least 30 days prior to the new due date and the Clerk of the Board shall be promptly informed of the new schedule.

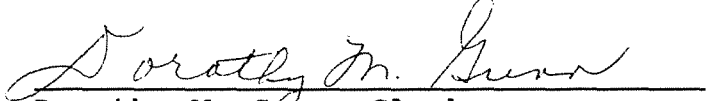
Because this proceeding is the type for which the Illinois Environmental Protection Act sets a very short statutory deadline for making a decision, absent a waiver, the Board will grant

0140-0220

extensions or modifications only in unusual circumstances. Any such motion must set forth an alternative schedule for notice, hearing, and final submissions, as well as the deadline for decision, including response time to such a motion. However, no such motion shall negate the obligation of the hearing officer to establish a scheduling order pursuant to the requirements of this order, and to adhere to that order until modified.

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 25th day of March, 1993, by a vote of 6-0.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board