

ILLINOIS POLLUTION CONTROL BOARD
July 9, 1992

IN THE MATTER OF:)
)
THE PETITION OF CABOT CORP. FOR) AS 91-10
AN ADJUSTED STANDARD FROM THE) (Adjusted Standard)
REQUIREMENTS OF 35 Ill. Adm.)
Code 725.293)

ORDER OF THE BOARD (by J. Anderson):

The Cabot Corp. (Cabot) filed a petition for an adjusted standard from the requirements of 35 Ill. Adm. Code 725.293 on December 27, 1991. Cabot filed its petition pursuant to Ill. Rev. Stat. 1991 ch. 111½, par. 1028.1, 35 Ill. Adm. Code 725.293(g) and 35 Ill. Adm. Code 106.Subpart D. Cabot seeks this adjusted standard from certain secondary containment requirements for tanks containing hazardous wastes. 35 Ill. Adm. Code 725.293(h)(3) requires that a petitioner submit its completed alternative design and operating practices demonstration within 180 days of filing its petition for an adjusted standard.

Cabot filed its completed demonstration on motion instanter on June 25, 1992, one day late. The motion instanter states that the filing was late because of its sheer volume and because Cabot effected last minute revisions. Accompanying the motion instanter are motions to file on other than recycled paper, because recycled paper was not immediately available to Cabot, and a motion to file fewer than nine copies of the attachments to the demonstration. Cabot states that it was impossible to timely obtain the required nine copies. Cabot asserts that the main body of the demonstration is over 200 pages, and the appendices are over 300 pages. The Board notes that several of the attachments are oversized, which would tend to complicate copying. The motion states that the Agency has no objection.

The Board hereby grants Cabot leave to file its completed demonstration instanter with fewer than nine copies of the attachments and duplicated on other than recycled paper.

By our order of March 26, 1992, the Board delayed the question of authorizing hearing until Cabot filed the required demonstration. Cabot has not yet filed an express request or waiver of hearing. In the course of its April 10, 1992 response to the Agency's preliminary comments, Cabot states as follows:

Cabot remains confident, however, that the Board will . . . provide Cabot a fair hearing after Cabot completes its demonstration.

Cabot Response to Agency Preliminary Comments at 13.

This is ambiguous and insufficient. The Board hereby orders that

0135-0085

Cabot shall submit a written filing that expressly requests or waives a public hearing. Cabot shall submit this written statement no later than the date upon which its response to the Agency recommendation is due.

By our order of March 26, 1992, we held that the filing of the completed demonstration triggers the deadline for filing the notice of newspaper publication and for filing the Agency recommendation. We further extended the deadline for filing the Agency recommendation from 21 days to 30 days after the filing of the completed demonstration, and extended the deadline for filing Cabot's response from 14 days to 21 days after the recommendation. The record bears no indication that Cabot has filed a notice of publication as of this date. It is due within 14 days of the filing of the completed demonstration, by July 6, 1992. As stated in our March 26 order, a failure to publish a notice required by statute renders a petition as filed defective and, thus, subject to dismissal for lack of Board jurisdiction. The extended filing deadline for the Agency recommendation renders that document due on or before July 25, 1992, unless, as noted in the March 26 order, the Agency can justify an additional extension of time in an appropriate motion. The Cabot response is due 21 days after the filing of the Agency recommendation.

By our order of March 26, 1992, the Board strongly encouraged dialog between Cabot and the Agency in this matter. As a part of its March 23, 1992 filing, Cabot stated that it was entering into discussions with the Agency. The Board again stresses that this is highly desirable. It will serve to narrow the issues, as well as to possibly eliminate some of the Agency's potential concerns. This will serve to leave the Board free to decide only the remaining substantive issues; it could also result in the Agency withdrawing objections it may have. As previously noted, Cabot may be required to comply with the general RCRA regulations on or before January, 1994 if the Board denies relief on the petition. While it is desirable for the parties to resolve as many issues as possible between themselves, this matter is subject to a tight time-frame.

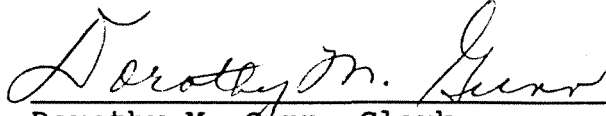
In summary, the Cabot notice of newspaper publication is due on or before July 6, 1992. The Agency recommendation is due on or before July 25, 1992, unless the Board grants an extension of time before that date. Cabot's response is due no later than 21 days after the Agency files its recommendation. Cabot shall submit either an express written request or a written waiver of hearing no later than the date upon which its response is due.

The Board will delay accepting the petition until Cabot has filed the notice of newspaper publication. We will defer setting this matter for hearing until 21 days after publication of the newspaper notice of filing and after the parties have completed

their respective filings.¹

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, do hereby certify that the above order was adopted on the 9th day of July, 1992, by a vote of 6-0.


 Dorothy M. Gunn, Clerk
 Illinois Pollution Control Board

¹ 35 Ill. Adm. Code 106.415(a) requires that the Board conduct a public hearing on an adjusted standard petition. The Board adopted this provision in R86-46, at 11 Ill. Reg. 13457 (Aug. 14, 1987) (effective August 4, 1987). In P.A. 85-1048, 1988 Ill. Legis. Serv. (West) 344, 356 (July 14, 1988) (effective Jan. 1, 1989), the General Assembly amended Section 28.1(d) of the Environmental Protection Act, Ill. Rev. Stat. 1989 ch. 111½, par. 1028.1(d), to eliminate the former mandatory public hearing requirement. It provides instead that the Board or another person may request a public hearing after public notice.