

ILLINOIS POLLUTION CONTROL BOARD
August 30, 1990

OLNEY SANITARY SYSTEMS)
and ANDREW OCHS,)
)
Petitioners,)
)
v.) PCB 89-175
) (Permit Appeal)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

ORDER OF THE BOARD (by M. Nardulli):

This matter comes before the Board on a "Motion For Summary Judgment Or In The Alternative, Petitioners' Response To Statement Of Respondent" filed August 24, 1990 by petitioners Olney Sanitary Systems and Andrew Ochs. On August 29, 1990, the Illinois Environmental Protection Agency (Agency) filed a response to petitioners' motion for summary judgment.

On October 3, 1989, within the 90-day statutory period, the Agency filed a statement denying petitioners' permit application ("denial statement"). On November 2, 1989, petitioners filed their petition for review alleging that the Agency failed to comply with Section 39(a) of the Environmental Protection Act (Act) which requires that the denial statement set forth the specific sections of the Act and regulations upon which denial of the permit is based. Prior to hearing, on July 16, 1990, the Agency filed a "Motion For Leave To File Statement Of Respondent Concerning The Basis For Permit Denial Instanter." The Agency's amended denial statement contains the specific section of the Act and regulations supporting denial. On July 19, 1990, the Board entered an Order stating that it would not grant the Agency's motion to file instanter at that time, but would allow petitioners the opportunity to respond. Petitioners responded with the instant motion for summary judgment or, in the alternative, response to the Agency's statement. Petitioners argue that they are entitled to summary judgment because the Agency failed to comply with Section 39(a) of the Act and, therefore, the permit should issue by operation of law.

Section 39(a) of the Act requires that, within 90 days of the filing of an application for a permit, the Agency provide the applicant with a detailed statement of the reasons for denying the permit application. (Ill. Rev. Stat. 1989, ch. 111 1/2, par. 1039(a).) The Agency's denial statement must include the following: (1) the sections of the Act which may be violated if the permit were granted; (2) the provisions of the regulations which may be violated if the permit were granted; (3) the specific

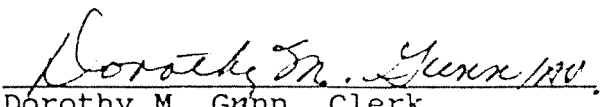
type of information, if any, which the Agency deems the applicant failed to provide; and (4) a statement of the specific reasons why the Act and regulations might not be met if the permit were granted. (Id.)

In Centralia Environmental Services v. IEPA, PCB 89-170 (Interim Order May 10, 1990) the Board addressed the issue presented here. In both Centralia and the instant case, the Agency issued denial statements within the 90-day period that were inadequate and did not comply with the terms of Section 39(a) in that the statements failed to set forth the specific sections of the Act and regulations which might be violated if the permits were granted. In Centralia, the Board noted that the failure to file a complete denial statement is not tantamount to the Agency's failure to act within the 90-day period which would trigger the issuance of the permit by operation of law. (Ill. Rev. Stat. 1989, ch. 111 1/2, par. 1039(a).) However, finding that the language of Section 39(a) clearly and principles of fundamental fairness require that the Agency provide the applicant with such information, the Board in Centralia remanded the matter to the Agency with the directive to cure this deficiency and issue an amended denial statement. Because the Agency's amended statement would be filed after the hearings had taken place in Centralia, the petitioner was given the opportunity to request another hearing and/or file a supplemental brief.

Initially, the Board grants the Agency's motion to file its amended denial statement instanter. The Board concludes that its decision in Centralia controls the outcome of petitioners' motion for summary judgment. Therefore, petitioners' motion for summary judgment on the basis of the Agency's failure to comply with Section 39(a) of the Act is denied.

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 30th day of August, 1990 by a vote of 7-0.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board