

ILLINOIS POLLUTION CONTROL BOARD
June 22, 1989

VILLAGE OF SAUGET,)
)
 Petitioner,)
)
 v.) PCB 89-86
)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Respondent.)

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

On May 16, 1989, Village of Sauget filed a petition for extension of prior variance. In addition, the Board received objections to grant of variance on June 8, 9, and 13, 1989. On June 16, 1989, the Agency filed a Motion for Additional Information Order. Also in its motion, the Agency in the alternative requests that this matter be dismissed.

The portion of the Agency's motion requesting dismissal is denied. The facts and issues involving a compliance plan which the Agency alleges constitute grounds for dismissal are inextricably interwoven with issues to be examined with the merits of this petition. However, the Board reserves ruling on the portion of the Agency's motion requesting additional information until a timely response is received or the response time has expired.

Due to the strict time deadlines within which the Board must operate, this matter is accepted for hearing, subject to cancellation depending upon future action on the pending motion.

The Board's procedural rules at 35 Ill. Adm Code 104.200 apply in this circumstance. Section 104.200 states, in part:

Section 104.200 Notice of Hearing

- a) The Hearing Officer, after appropriate consultation with the parties, shall set a time and place for hearing to be held within 60 days of the filing of the petition.
- b) The Hearing Officer shall give notice of the hearing in accordance with Section 103.123(b), at least 21 days before the hearing to the petitioner, the Agency, and anyone who has filed an objection to the petition.

Therefore, the hearing officer must give notice of hearing to the objectors.

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 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 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.

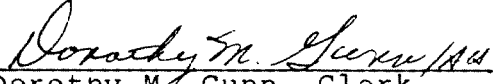
Because of requirements regarding the publication of notice of hearing, no scheduled hearing may be cancelled unless the petitioner provides an open waiver or a waiver to a date at least 75 days beyond the date of the motion to cancel hearing. This should allow ample time for the Board to republish notice 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 decisionmaking, absent a waiver, the Board will grant extensions or modifications only in unusual circumstances. Any such motion must set forth an alternataive 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 set a date pursuant to the fourth paragraph 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 22nd day of June, 1989, by a vote of 70.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board