

ILLINOIS POLLUTION CONTROL BOARD
November 2, 2000

ROGER STONE,)
)
Petitioner,)
)
v.) PCB 01-68
) (Permit Appeal – NPDES)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY and NAPERVILLE)
PARK DISTRICT,)
)
Respondents.)

ORDER OF THE

BOARD (by G.T. Girard):

On October 18, 2000, Roger Stone filed a petition to contest the issuance of a National Pollutant Discharge Elimination System (NPDES) permit pursuant to Section 40(e) of the Environmental Protection Act (Act) (415 ILCS 5/40(e) (1998)). The permit was issued by the Illinois Environmental Protection Agency (Agency) on October 13, 2000, to the Naperville Park District (Naperville) for its trap shooting facility located at 735 S. West Street, Naperville, Dupage County, Illinois.

A third-party appeal of an NPDES permit is authorized by Section 40(e) of the Act. 415 ILCS 5/40(e) (1998). The Board's procedural rules explain the relief available in a permit appeal. Specifically, 35 Ill. Adm. Code 105.102(b)(10) provides that the Board "may affirm or reverse the decision of the Agency, in whole or in part, may remand the proceeding to the Agency for the taking of further evidence, or may direct the issuance of the permit in such form as it deems just, based upon the law and evidence."

On October 24, 2000, the petitioner filed a motion to declare the NPDES permit ineffective pending the Board's decision or in the alternative to stay the permit. On October 31, 2000, Naperville filed a motion for an extension of time to respond to petitioner's motion for stay. The Board grants the motion for an extension of time until November 14, 2000.

On October 26, 2000, the petitioner filed a motion to waive the requirements of 35 Ill. Adm. Code 105.102(b)(6). Section 105.102(b)(6) requires the petitioner name as respondents all persons who were parties to or participants at the public hearing held by the Agency. The petitioner asserts that several hundred people attended the hearing or submitted comments during the public comment period. Mot. at 2. Given the petitioner does not know the identities of all such persons and the naming of such persons would be unduly expensive, the Board grants the petitioner's motion and waives the requirement of Section 105.102(b)(6).

This matter is accepted for hearing. The hearing in this matter must be scheduled and completed in a timely manner, consistent with Board practices, and the applicable statutory decision deadline (set out in Section 40(a)(3) of the Act), or the decision deadline as extended by a waiver.

As the Board noted in McHenry County Defenders, Inc. v. IEPA (August 6, 1998), PCB 98-173, slip op. at 4-5, the Board has construed the Act and Section 40(e) as giving the person who had requested the permit: (1) the right to a decision within the applicable statutory time frame (now 120 days), and (2) the right to waive (extend) the decision period. Naperville, the permit applicant, is the party with the right to a decision within 120 days and is the only party with the right to waive the decision deadline. The result is that failure of this Board to act within the 120 days would allow the permit applicant, Naperville, to pursue an appellate court order as detailed in Section 40(b)(3) of the Act.

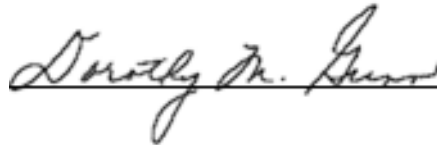
The Board will assign a hearing officer to conduct hearings consistent with this order and the Clerk of the Board will promptly issue appropriate directions to that assigned hearing officer. The assigned hearing officer must inform the Clerk of the Board of the time and location of the hearing at least 30 days in advance of hearing so that a 21-day public notice of hearing may be published. After hearing, the hearing officer must submit an exhibit list, a statement regarding credibility of witnesses, and all actual exhibits to the Board within five days after the hearing.

Any briefing schedule must provide for final filings as expeditiously as possible. Absent any future waivers of the decision deadline, the statutory decision deadline is now February 15, 2001 (120 days from October 18, 2000). The Board meeting immediately preceding the decision deadline is scheduled for February 1, 2001.

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 all of the parties, the hearing officer shall unilaterally set a hearing date. The hearing officer and the parties are encouraged to expedite this proceeding as much as possible. The Board notes that Board rules (35 Ill. Adm. Code 105.102) require the Agency to file the entire Agency record of the permit application within 14 days of notice of the petition.

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 2nd day of November 2000 by a vote of 7-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", written over a horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board