

ILLINOIS POLLUTION CONTROL BOARD
August 6, 1987

PIKE COUNTY SAND AND GRAVEL,)
)
 Petitioner,)
)
 v.) PCB 87-50
)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
 Respondent.)

ORDER OF THE BOARD (by J. Anderson):

Pending Motions

This permit appeal proceeding was initiated by an April 24, 1987 filing. Pursuant to the Board's Order of April 30, 1987 noting various deficiencies, an amended petition was filed on July 23; the Board's 120 day decision period commences with the July 23 filing.

On August 4, the Agency filed a motion for dismissal of PSG's request for a determination that its facility is exempt from permit requirements pursuant to 35 Ill. Adm. Code 404.103(a)(3), and a special appearance relative to the motion, as well as a motion for extension of time to file its record. The latter motion requests 14 days beyond the date of the Board's disposition of the motion for dismissal.

On August 5, PSG filed a response in opposition to both Agency motions, and requested that the special appearance be stricken.

The Agency's motion to dismiss is denied. The issue of the applicability of the exemption is most properly determined after the factual context of the legal issues is developed during the course of the appeal. This holding moots the special appearance issue. The Agency's motion for extension is granted; the Agency's Record shall be filed on or before August 21.

Hearing Procedures

This matter is accepted 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 as expeditiously as possible but 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 decision until a date certain.

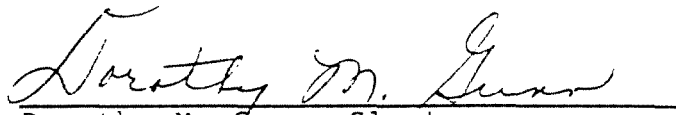
Because of requirements regarding the publication of notice of hearing, no scheduled hearing may be canceled unless the petitioner provides an open waiver or a waiver to a date at least 75 days beyond the date of the motion to cancel hearing. This should allow ample time for the Board to republish notice 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 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 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 6th day of August, 1987, by a vote of 6-0.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board