

ILLINOIS POLLUTION CONTROL BOARD
September 17, 1987

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

ORDER OF THE BOARD (by J. Anderson):

On August 24, 1987 the Agency filed a motion for reconsideration of the Board's Order of August 6, 1987 denying the Agency's motion to dismiss the first count of this permit appeal. No response has been filed.

The motion for reconsideration is granted. Upon reconsideration, the motion to dismiss for lack of subject matter jurisdiction is denied.

The Agency alternatively requests the Board to determine either that a) the withdrawal here of a Section 404.103(c) permit exemption is not reviewable, or (b) if the September 26, 1986 withdrawal was reviewable, that the petition for review should have been filed within 35 days of that date. The Board notes that while the Agency has presented arguments against reviewability, the Agency also stated its belief that the "substantially better view" is to find in favor of reviewability. The Board agrees with the Agency's arguments in favor of a finding that an Agency determination of withdrawal is reviewable (see August 4 motion to dismiss at p. 4-5), and finds that such determinations are reviewable.

The issue then becomes one of the timeliness of the petition for review.

The Agency's letter withdrawing the exemption and advising Pike County of the need for a permit (Agency Rec., Exh. 54) states:

"Please be advised that the permit exemption granted April 16, 1982 shall continue for forty-five (45) days from the date of this letter and pending the period during which the required permit application is under review by this Agency."

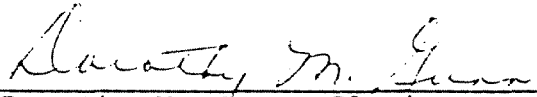
By its terms, the letter indicates that the Agency did not consider its determination final until it had acted upon a permit application filed within 45 days of September 26, 1986.

Pike County filed its permit application on October 27, 1986. The Agency's March 26, 1987 denial of that application is the subject of this appeal, which the Board has ruled was timely filed within 35 days.

Accordingly, the Board finds that it has jurisdiction to hear both counts of Pike County's 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 17th day of September, 1987, by a vote of 6-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board