

ILLINOIS POLLUTION CONTROL BOARD

August 5, 1999

IN THE MATTER OF:)
)
PETITION OF HORSEHEAD RESOURCE AND) AS 00-1
DEVELOPMENT COMPANY, INC. FOR AN ADJUSTED) (Adjusted Standard - RCRA)
STANDARD UNDER 35 ILL. ADM. CODE 720.131(c))
)

ORDER OF THE BOARD (by N.J. Melas):

On July 20, 1999, Horsehead Resource Development Company, Inc. (Horsehead) filed a petition for an adjusted standard (petition) with the Board under 35 Ill. Adm. Code 720.131(c), an application for non-disclosure of confidential data, and a motion to appear *pro hac vice* from attorney John N. Moore.

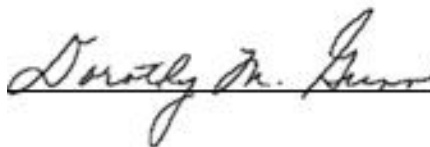
Pursuant to the Illinois Environmental Protection Act and the Board's regulations, Horsehead is to cause notice of the petition in a newspaper of general circulation within 14 days after the filing of the petition. See 415 ILCS 5/28.1 (1998); 35 Ill. Adm. Code 106.711 and 106.712. The 14-day notice deadline expired August 3, 1999. The Board has learned from Horsehead's counsel that it has not yet caused the required publication.

Publication of notice of filing is jurisdictional. (See, *e.g.*, In re Rhone-Poulenc Basin Chemical Company (January 20, 1994), AS 93-9; LeRoy Brown & Sons, Inc. v. County Board (February 4, 1993), PCB 92-132 citing Kane County Defenders, Inc. v. PCB, 139 Ill. App. 3d 588, 487 N.E.2d 743 (2nd Dist. 1985) and Illinois Power Company v. PCB, 137 Ill. App. 3d 499, 484 N.E.2d 898 (4th Dist. 1985).) Publication did not occur within the 14-day period and, as a result, the Board does not have statutory authority to hear the petition.

The Board therefore dismisses the petition and directs the Clerk of the Board to close docket AS 00-1. Petitioner may refile the petition and publish notice of the new petition within 14 days of that filing in order to correct the defective notice.

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 5th day of August 1999 by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board