

ILLINOIS POLLUTION CONTROL BOARD
February 6, 1986

HILLVIEW FARMS FERTILIZERS, INC.,)	
)	
Petitioner,)	
)	
v.)	PCB 86-18
)	
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

ORDER OF THE BOARD (by B. Forcade):

On January 31, 1986, Hillview Farms Fertilizers, Inc. filed Petition for Review. 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 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, written schedule for submission of briefs if any 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.

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. Any waiver shall extend the time deadline of Section 105.102 regarding filing the Agency record by the equivalent number of days, but in any circumstance the record must be filed at least 10 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 would 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 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 set a date pursuant to the second paragraph of this Order.

Petition to Intervene

This matter involves Hillview's February 5, 1986 appeal of the Agency's denial of Hillview's application for an operating permit for its sludge injection facility in McHenry County, Illinois. On February 5, the Attorney General filed a petition for leave to intervene, requesting a Board ruling today. Although the Attorney General has not given a reason for truncation of Hillview's time to respond, the Board will rule on the motion since a) the Board believes that an affirmative ruling is required by the Supreme Court's ruling in Pioneer Processing v. IEPA, 102 Ill.2d 119, 464 N.E. 2d 238, 247 (1984), b) hearing in this matter must be scheduled prior to the next Board meeting, and c) any error can be corrected upon a motion for reconsideration.

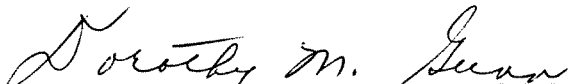
Pioneer Processing involved review of a Board decision in a permit appeal, one issue being the Attorney General's power to initiate judicial review of a Board decision where the Attorney General had not participated in the proceeding before the Board. The Supreme Court ruled such appeal was proper, noting its prior decisions discussing the powers of the Attorney General as a constitutional officer, as well as the purposes of the Environmental Protection Act, and finding that the Attorney General "as chief legal officer of this State ... has the duty and authority to represent the interests of the People of the State to insure a healthful environment." Logic dictates that if the Attorney General has the constitutional right to initiate review of a Board decision, he possesses the corollary right to intervene and participate in a proceeding prior to the Board's

decisions. The petition for leave to intervene is therefore granted.

The Board notes that in Waste Management, Inc. v. IEPA, PCB 84-45, 84-61 and 84-68, (consolidated), Orders of October 25 and November 26, 1984, the Board found that there was no explicit legislative authority for allowance of citizen intervention in permit appeal cases, citing Landfill, Inc., v. PCB, 74 Ill.2d 541, 387 N.E. 2d 258 (1978). These Orders were affirmed by the Third Duistrict Appellate Court. IEPA v. IPCB and Waste Management Inc., No. 3-38-0777, (Third Dist. November 15, 1985), the Board finds no inconsistency between this ruling and the ruling today in Hillview, given the constitutional as well as statutory nature of the Attorney General's duties and authority.

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 February, 1986, by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board