

ILLINOIS POLLUTION CONTROL BOARD
May 9, 1986

MOBIL OIL CORPORATION,)
)
 Petitioner,)
)
 v.) PCB 86-45
)
 ILLINOIS ENVIRONMENTAL PROTECTION)
 AGENCY,)
)
 Respondent.)

ORDER OF THE BOARD (by J. Marlin):

This matter comes before the Board upon the March 31, 1986 filing by Mobil Oil Corporation (Mobil) of a petition for extension of variance from the 3 mg/l ammonia nitrogen effluent standard of 35 Ill. Adm. Code 304.122. The Board has received two objections to the petition: one filed April 24, the other April 30, 1986.

Section 104.141 requires that all objections to variance petitions be filed within 21 days of the filing of the petition. Section 104.140(b) requires that the Illinois Environmental Protection Agency (Agency) publish notice of a variance petition in a newspaper of general circulation in the county within 10 days of the petition's filing. The petition was filed with the Board on March 31, 1986 and with the Agency on April 2, 1986. The Agency published the requisite newspaper notice on the same day of the week for three consecutive weeks, namely on Friday, April 11, 18, and 25, 1986. The notice itself stated that written objections must be received by the Board by April 23, 1986, which was two days before the last notice was published.

The Board, in computing the 21-day objection period of Section 104.141, commences counting with the date of filing of the petition with the Board. The Agency, however, computed the period starting with April 2, 1986. While technically the objections were late, the objectors relied on the last published notice of hearing. While there was no attempt by the State of Illinois to circumvent the notice requirement, there is some question as to whether there was proper notice in this case. Therefore, the Board will accept the objections of the citizens and hereby orders this matter to hearing.

This proceeding, which involves an NPDES permit, carries a 120 day Board decision deadline. Already, 39 days of this period have elapsed.

Hearing must be scheduled within 10 days of the date of this Order and completed within 50 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 35 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. The hearing officer may by order set a schedule for submission of briefs. Such schedule shall provide for final filings as expeditiously as possible including a copy to Dr. John Marlin, 104 West University Avenue, Urbana, IL 61801, but 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 of fewer number of days than 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.

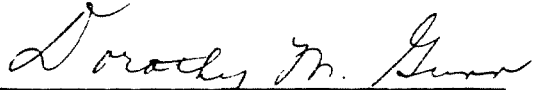
Because of requirements regarding the publication of notice of hearing, no scheduled hearing may be canceled unless the petitioner provides an open waiver or a waiver to a date at least 75 days beyond the date of the motion to cancel hearing. This should allow ample time for the Board to republish notice 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 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 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 fifth paragraph of this Order.

IT IS SO ORDERED.

Board Member J. T. Meyer dissented.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 9th day of May, 1986, by a vote of 6-1.


Dorothy M. Gunn
Dorothy M. Gunn, Clerk
Illinois Pollution Control Board