

ILLINOIS POLLUTION CONTROL BOARD  
September 23, 1999

IN THE MATTER OF: )  
 )  
PETITION OF THE ENSIGN-BICKFORD COMPANY ) AS 00-3  
FOR AN ADJUSTED STANDARD FROM 35 ILL. ADM. ) (Adjusted Standard - Air)  
CODE 237.103 )  
 )

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

On August 11, 1999, the Ensign-Bickford Company (EBCO) filed a petition with the Board for an adjusted standard (petition) from 35 Ill. Adm. Code 237.103. EBCO requested that the Board grant it relief from those open burning restrictions in the Board's rules for its facility at Wolf Lake in Union County.

Pursuant to the Illinois Environmental Protection Act and the Board's regulations, EBCO 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 25, 1999. The notice did not appear until August 26, 1999.

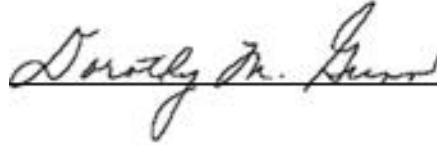
Publication of notice of filing is jurisdictional. (See, *e.g.*, In re Rhone-Poulenc Basin Chemical Company (January 20, 1994), AS 93-9; LeRoy Brown & Sons, Inc. v. County Board (February 4, 1993), PCB 92-132 citing Kane County Defenders, Inc. v. PCB, 139 Ill. App. 3d 588, 487 N.E.2d 743 (2nd Dist. 1985) 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.

On September 3, 1999, the Illinois Environmental Protection Agency (Agency) filed a motion for extension of time to file response and affidavit (motion) in this matter. As the Board has no authority to hear the petition, the Agency's motion is denied as moot.

The Board therefore dismisses the petition, denies the Agency's motion as moot, and directs the Clerk of the Board to close docket AS 00-3. EBCO 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 23rd day of September 1999 by a vote of 6-0.

A handwritten signature in cursive script that reads "Dorothy M. Gunn". The signature is written in black ink and is positioned above a horizontal line.

Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board