

ILLINOIS POLLUTION CONTROL BOARD
May 1, 1997

IN MATTER OF:)
)
PETITION OF THE LOUIS BERKMAN) AS 97-5
COMPANY, d/b/a THE SWENSON) (Adjusted Standard - Air)
SPREADER COMPANY, FOR AN)
ADJUSTED STANDARD FROM 35 ILL.)
ADM. CODE PART 215 SUBPART F)

ORDER OF THE BOARD (by K.M. Hennessey):

This case involves the petition of the Louis Berkman Company, d/b/a the Swenson Spreader Company (Swenson), for an adjusted standard. The rule from which Swenson seeks an adjusted standard is 35 Ill. Adm. Code 215.204(j), the emissions limit applicable to the painting operations at Swenson's plant in Lindenwood, Ogle County, Illinois. (Second Amendment (in the Nature of a Substitute) to the Petition for an Adjusted Standard at 2.)

Now pending before the Board is the Illinois Environmental Protection Agency's (Agency) motion to strike (motion) Swenson's general response (general response) in opposition to the Agency's response to the petition for an adjusted standard. For the reasons stated below, the Board grants the motion.

PROCEDURAL HISTORY

On October 11, 1996, Swenson filed a petition for an adjusted standard from 35 Ill. Adm. Code 215.204(j). Swenson filed a first amended petition on November 4, 1996, a second amended petition on December 20, 1996 and a third amended petition on January 3, 1997.

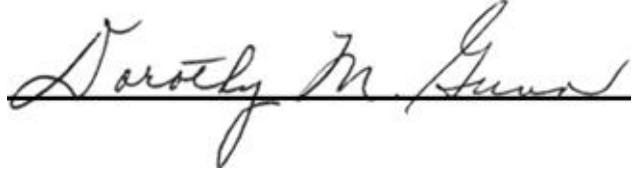
The Agency filed a response to the petition, recommending that the Board deny the adjusted standard, on February 26, 1997. On that date, the Agency also filed a motion to file instant its response to the petition, which motion is hereby granted. On April 1, 1997, Swenson filed its general response. The Agency's motion now at issue was filed on April 9, 1997. Swenson did not file a response to the motion. A hearing on the petition for an adjusted standard was held on April 17, 1997 and is to be continued this month.

DISCUSSION

Because the applicable adjusted standard procedural rules at 35 Ill. Adm. Code 106.701-106.907 do not provide petitioners a right to file a reply to Agency responses on adjusted standard petitions, Swenson should have filed a motion for leave to file its general response. It did not do so. Accordingly, the Board grants the Agency's motion to strike Swenson's general response. Moreover, the Board notes that Swenson will have the opportunity at the continued hearing to introduce matters raised in its general response.

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 1st day of May, 1997, by a vote of 7-0.

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

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board