

ILLINOIS POLLUTION CONTROL BOARD  
March 18, 2004

|                        |   |                               |
|------------------------|---|-------------------------------|
| ISG HENNEPIN, INC.,    | ) |                               |
|                        | ) |                               |
| Petitioner,            | ) |                               |
|                        | ) |                               |
| v.                     | ) | PCB 04-160                    |
|                        | ) | (Provisional Variance Appeal) |
| ILLINOIS ENVIRONMENTAL | ) |                               |
| PROTECTION AGENCY,     | ) |                               |
|                        | ) |                               |
| Respondent.            | ) |                               |

ORDER OF THE BOARD (by J.P. Novak):

On March 15, 2004, ISG Hennepin, Inc. (ISG Hennepin) filed a petition asking the Board to review a February 4, 2004 determination of the Illinois Environmental Protection Agency (Agency). The petition recites that its is filed pursuant to Sections 35 and 37 of the Environmental Protection Act (Act), and Subpart B of Part 105 of the Board's procedural rules. See 415 ILCS 5/35, 37; 35 Ill. Adm. Code 105.Subpart B. The Agency denied ISG Hennepin's request for provisional variance from various requirements of its permit for a Class I underground injection control permit located at its facility at Route 71 and I-180, Hennepin, Putnam County. The petition is accompanied by an Ohio attorney's motion to appear *pro hac vice*.

For the reasons below, the Board dismisses the petition as improperly filed. The motion to appear is accordingly denied as moot. But, petitioner is free to file a variance petition under Section 35(a) of the Act and 35 Ill. Adm. Code 104.Subpart B.

Section 37(b) of the Act, as amended by P. A. 93-152, effective July 10, 2003 provides in pertinent part:

Any person seeking a provisional variance pursuant to . . . Section 35[(b)] shall make a request to the Agency. The Agency shall promptly investigate and consider the merits of the request. If the Agency . . . denies the request, the person may initiate a proceeding with the Board under subsection (a) of Section 35 (emphasis added).

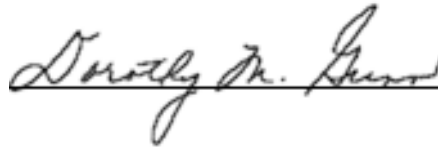
Section 35(a) establishes the Board's authority to grant variances, not to hear appeals of variance denials. The procedures for filing an action under Section 35(a) are found in Subpart B of Part 104 of the Board's procedural rules. See 35 Ill. Adm. Code 104.Subpart B.

Nothing in this order dismissing this improper appeal prevents petitioner from filing a variance petition meeting the requirements of Section 35(a) of the Act and 35 Ill. Adm. Code 104.Subpart B. This case is dismissed, and the docket is closed.

IT IS SO ORDERED.

Section 41(a) of the Environmental Protection Act provides that final Board orders may be appealed directly to the Illinois Appellate Court within 35 days after the Board serves the order. 415 ILCS 5/41(a) (2002); *see also* 35 Ill. Adm. Code 101.300(d)(2), 101.906, 102.706. Illinois Supreme Court Rule 335 establishes filing requirements that apply when the Illinois Appellate Court, by statute, directly reviews administrative orders. 172 Ill. 2d R. 335. The Board's procedural rules provide that motions for the Board to reconsider or modify its final orders may be filed with the Board within 35 days after the order is received. 35 Ill. Adm. Code 101.520; *see also* 35 Ill. Adm. Code 101.902, 102.700, 102.702.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on March 18, 2004, by a vote of 5-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", written over a horizontal line.

Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board