

ILLINOIS POLLUTION CONTROL BOARD
May 7, 1998

NORTH SHORE SANITARY DISTRICT,)
)
Petitioner,)
)
v.) PCB 98-149
) (Permit Appeal - Land)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

ORDER OF THE BOARD (by C.A. Manning):

On March 24, 1998, the Illinois Environmental Protection Agency (Agency) issued a final decision, denying North Shore Sanitary District's (petitioner) Sulfate Assessment Report, thereby denying petitioner's request for permit. Attached to the decision was a document containing the stated reasons for the denial.

By a letter dated April 28, 1998, petitioner requested that the Agency grant a 90-day extension of the 35-day appeal period. A copy of this letter was received by the Board on May 1, 1998. The Agency subsequently denied the request for an extension by letter dated May 5, 1998, and received by the Board on the same day. The grounds for the denial of the extension was that the request, received by the Agency on April 30, 1998, was not timely filed with the Agency.

Because the Agency did not concur in the request for an extension, the statutory conditions for the extension have not been met. Accordingly, the Board cannot grant a 90-day extension of the 35-day appeal period in which to file an appeal pursuant to Section 40(a)(1) of the Environmental Protection Act. 415 ILCS 5/40(a)(1) (1996). The Board can, however, construe petitioner's letter requesting an extension of the 35-day time period as a petition for review so that petitioner will not lose its right to file an appeal of the Agency's determination.¹ (See, e.g., Gibson Service Station v. Illinois Environmental Protection Agency (June 5, 1997), PCB 97-198, slip op. at 1; Southern Food Park, Inc. v. Illinois Environmental Protection Agency (August 3, 1995), PCB 96-15, slip op. at 1; Alloy Casting & Engineering Co. v.

¹ An appeal contesting the validity of the Agency's determination could have been brought to the Board within 35 days after the Agency's final determination. (See 415 ILCS 5/57.7(c)(4)(D) (1996); 415 ILCS 5/40(a)(1) (1996); 35 Ill. Adm. Code 732.502(f).) The 35-day appeal period could have, however, been extended "for a period of time not to exceed 90 days by written notice provided to the Board from the applicant and the Agency within the initial appeal period." (415 ILCS 5/40(a)(1) (1996)). Thus, any complete notice was due to be filed with the Board or postmarked no later than April 28, 1998, 35 days after the Agency's final determination.

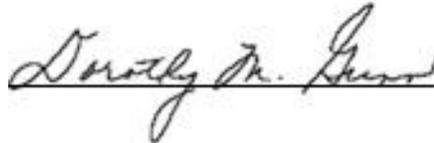
Illinois Environmental Protection Agency (August 3, 1995), PCB 96-8, slip op. at 1; Stone Container Corp. v. Illinois Environmental Protection Agency (August 3, 1995), PCB 96-4, slip op. at 1). Moreover, the Board believes that this is an appropriate course of action because attached to the letter was the Agency's letter denying the plan and a document containing the stated reasons for the Agency's denial.

Petitioner's request, construed as a petition for review, however, does not identify when it was sent to the Board, nor is it sufficient under the Board's rules (see 35 Ill. Adm. Code 101.103, 105.102(a)). The Board will therefore give petitioner ten days to file an amended petition for review and proof of when the request was sent to the Board. If the petitioner does not file an amended petition for review within this time period, or if no proof of service is provided or the proof of service indicates that the request for extension was untimely, this matter will be dismissed, and the docket closed.

The 120-day statutory period in which the Board must render a final decision will begin running as of the date of the filing of the amended petition. Additionally, a \$75 filing fee will be required at such time as petitioner files the amended petition (see 35 Ill. Adm. Code 101.120(b)(3)).

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 7th day of May 1998 by a vote of 7-0.

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

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board