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STATE OF ILLINOIS
POLLUTION CONTROL BOARD

**BEFORE THE ILLINOIS
POLLUTION CONTROL BOARD**

C&S RECYCLING, INC.,)	
)	
Petitioner,)	
)	No. PCB 95-100
v.)	
)	(Permit Appeal/Land)
ILLINOIS ENVIRONMENTAL PROTECTION)	
AGENCY,)	
)	
Respondent.)	

NOTICE OF FILING

TO: See Attached Service List

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Pollution Control Board, an Amended Petition for Permit Appeal and Request for Hearing, a copy of which is herewith served upon you.

C&S RECYCLING, INC.

By: Philip J. Rock
One of its Attorneys

Date: July 28, 1995

Philip J. Rock
Kevin W. Horan
Rock, Fusco, Reynolds & Garvey
350 N. LaSalle Street
Suite 900
Chicago, Illinois 60610
(312) 464-3500

**BEFORE THE ILLINOIS
POLLUTION CONTROL BOARD**



C&S RECYCLING, INC.,)
)
 Petitioner,)
)
 v.) No. PCB 95-100
) (Permit Appeal/Land)
 ILLINOIS ENVIRONMENTAL PROTECTION)
 AGENCY,)
)
 Respondent.)

AMENDED PETITION FOR PERMIT APPEAL AND REQUEST FOR HEARING

The Petitioner, C&S Recycling, Inc., ("Petitioner") by and through its attorneys, ROCK, FUSCO, REYNOLDS, CROWE & GARVEY, hereby petitions the Illinois Pollution Control Board ("Board") for a hearing pursuant to 415 ILCS 5/40 and 35 Ill. Adm. Code 105 et. seq. and in support thereof states as follows:

1. On or about November 28, 1994, the Petitioner filed an application before the Illinois Environmental Protection Agency ("Agency") for a permit to develop and operate a municipal waste transfer station. After the permit application was docketed by the Agency, the General Assembly passed, and the Governor approved, P.A. 88-681 (HB 1594) effective December 22, 1994, which among other changes deleted the word "regional" throughout the Environmental Protection Act ("Act").

2. In a letter dated February 10, 1995, the Agency denied the Petitioner's permit application. The denial was based on the Agency's determination that the facility is unable to comply with the December 22, 1994 amendment to Section 22.14 of the Act which, in the Agency's opinion, makes C&S subject to certain setback

requirements. (415 ILCS 5/22.14). A copy of the Agency's denial letter of February 10, 1995, is attached hereto as Exhibit "A".

3. C&S Recycling operates a recycling facility located on 1.9 acres on the west side of the City of Chicago, at 4001 West Taylor, just north of the CSX Railroad, south of Taylor Street, west of Pulaski and east of Karlov. Copies of two zoning maps showing the zoning for the property and the surrounding areas are attached hereto as Exhibits "B" and "C" and are made a part hereof. The company is family owned and operated and employs approximately 20 people. It has been in the recycling business since 1989 and accepts recycling materials generated within the City of Chicago and the suburbs. C&S presently collects source separated and some commingled recyclables in a volume of approximately 125 tons per day.

4. In its application for a permit to the Agency, C&S proposed an expansion of its recycling facility to a capacity of approximately 210 tons per day. New materials were to include commingled recyclables and municipal solid waste. The application also proposed the addition of a 4,000 sq. ft. building for a fully enclosed tipping floor and loading dock. The improvements are necessary for a more efficient solid waste transfer and material recovery and recycling facility which is also known as a MRRF.

5. In April 1993, the Zoning Board of Appeals of Chicago jointly met with the City Department of the Environment ("D.O.E.") and resolved, after notice and hearing, that C&S's requested special use was approved and authorized a transfer station in

conjunction with the recycling facility in the existing one-story building. The application was then considered by the D.O.E. and was initially denied in July 1993. After further discussion and negotiation with the D.O.E., the application was refiled in May 1994 with additional supporting documentation and a second public hearing was held in the community in September 1994. That application for permit is still pending and is subject to section 11-4-120 of the Chicago Municipal Code as amended.

6. The facility currently does not accept and is not licensed to accept municipal solid waste. In order to comply with the law as it existed at the time its application was filed before the Agency, C&S proposed to accept municipal solid waste from only the City of Chicago so that it would be considered as a "local" as opposed to a "regional" pollution control facility.

7. In an order dated April 6, 1995 the Board on its own motion extended the due date for the filing of a petition on behalf of C&S to June 15, 1995. A copy of the order is attached as Exhibit "D". A timely petition was filed before the Board on June 9, 1995. On June 22, 1995 the Board directed the Petitioner to file an amended petition within 45 days of the date of the order (i.e. on or before August 7, 1995). A copy of the June 22, 1995 order of the Board is attached as Exhibit "E".

8. Petitioner seeks a hearing before the Board based on the following grounds:

1. Section 22.14, as amended, creates an arbitrary and unreasonable hardship upon Petitioner;

2. Section 22.14 only applies prospectively to permit applications filed on or after the effective date of December 22, 1994;
3. The Petitioner is subject only to the home rule requirements of the City of Chicago and not the siting requirements of Section 22.14;
4. Section 22.14 is unconstitutional on its face and as applied in that it deprives Petitioner of its rights to due process, equal protection, uniformity of laws and constitutes a taking without just compensation.

WHEREFORE, C&S Recycling, Inc. respectfully requests a hearing regarding the Agency's denial of the permit, and an order from the Board requiring the Agency to issue the permit for application number 0316290008.

Respectfully submitted,
R&S Recycling, Inc.

BY:


One of its Attorneys

Philip J. Rock
Kevin W. Horan
Rock, Fusco, Reynolds, Crowe & Garvey
350 N. LaSalle Street, Suite 900
Chicago, Illinois 60610
(312) 464-3500



State of Illinois
ENVIRONMENTAL PROTECTION AGENCY

Mary A. Gade, Director

2200 Churchill Road, Springfield, IL 62794-9276

217/524-3300

February 10, 1995

C&S Recycling, Inc.
Attn: Mr. Michael Flood
4827 W. Harrison Street
Chicago, Illinois 60644

Re: 0316290008 -- Cook County
C&S Recycling/Transfer Station
Log No. 1994-553
Permit File

Gentlemen:

This will acknowledge receipt of your Application for Permit to develop and operate a solid waste management site, dated November 28, 1994, and received by this Agency on November 29, 1994.

Your permit application to develop and operate a municipal waste transfer station is denied.

You have failed to provide proof that granting this permit would not result in violations of the Illinois Environmental Protection Act. Section 39(a) of the Illinois Environmental Protection Act (Ill. Rev. Stat., Ch. 111 1/2, par. 1039(a), and hereinafter, Act) requires the Agency to provide the applicant with specific reasons for the denial of permit. The following reason(s) are given:

1. The application failed to demonstrate that the proposed pollution control facility is located at least 800 feet from the nearest residence or property zoned for primarily residential uses. Pursuant to Section 22.14 of the Act, as amended by the December 22, 1994 enactment of House Bill 1594, if a proposed pollution control facility is located in an industrial area of 10 or more contiguous acres it must be located at least 800 feet from the nearest property zoned for primarily residential uses.
2. The application failed to describe if containers stored outside would contain waste, and if so, if they would be covered to minimize the possibility of leachate and/or odors leaving the property and to minimize rodent problems. This information is required pursuant to Sections 9(a) and 21(a) of the Act.
3. The application proposes that municipal waste be stored overnight on the tipping floor without demonstrating how Section 12(a) and Section 12(b) of the Act would not be violated. Specifically, the application failed to demonstrate how leachate and odor would be prevented from leaving the property and how disease vectors such as rodents would be controlled.

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Within 35 days after the notification of the final permit decision the applicant may petition for a hearing before the Illinois Pollution Control Board to contest the decision of the Agency.

Should you wish to reapply or have any questions regarding this application, please contact Sallie Springer at 217/524-3300.

Sincerely,

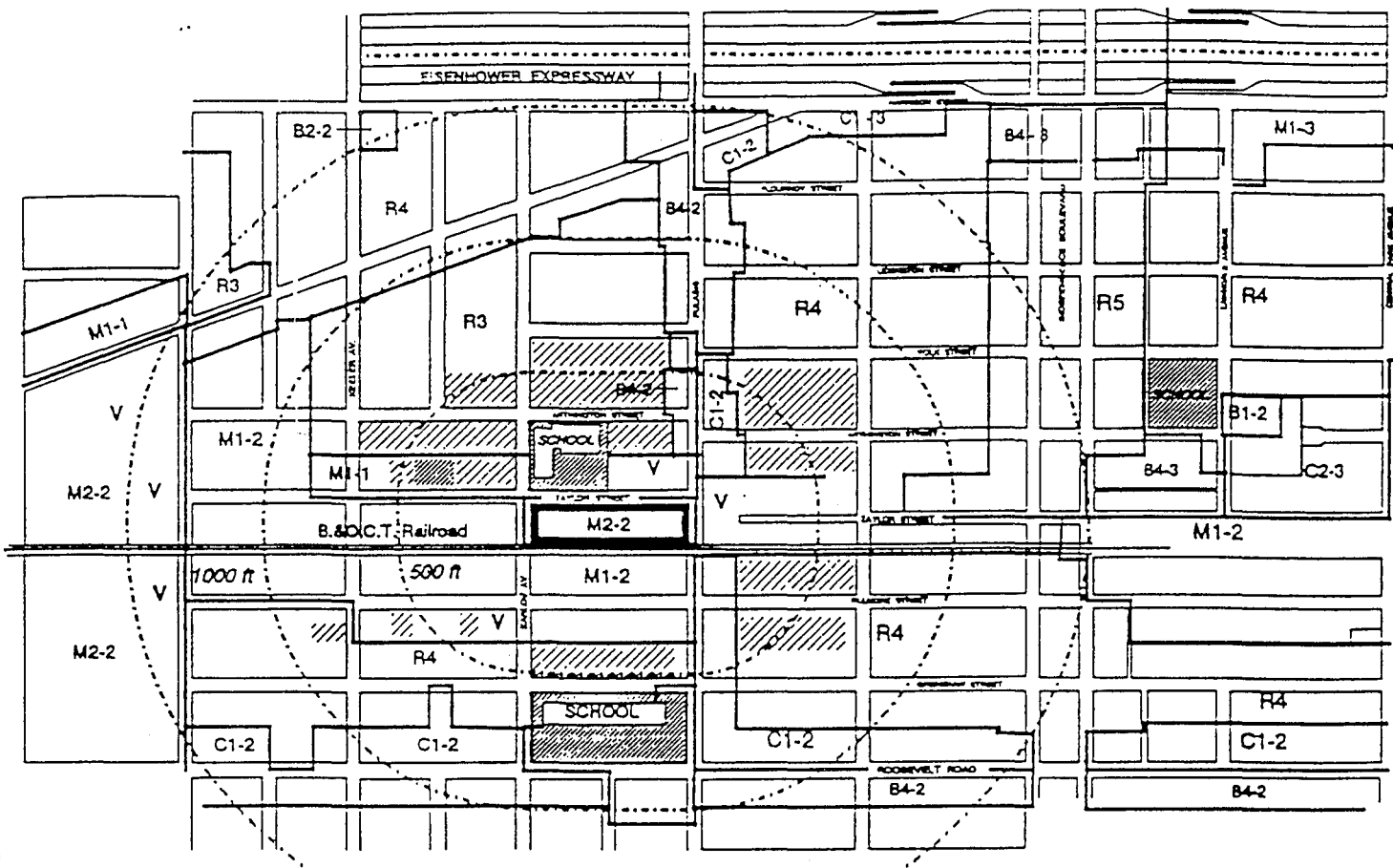


Edwin C. Bakowski, P.E.
Solid Waste Branch Manager
Permit Section, Bureau of Land

ECB:smSAS/mls/24X/30-31
SAS

cc: John O. Bulut, P.E. -- McDonough Associates, Inc.
Bill Abolt -- City of Chicago Department of Environment

EXISTING ZONING AND SURROUNDING LAND USE MAP



LEGEND:

— ZONING BOUNDARY

M2-2 ZONING DISTRICT

SUBJECT PROPERTY

SCHOOL AND PARK USE

RESIDENTIAL USE

V VACANT LAND

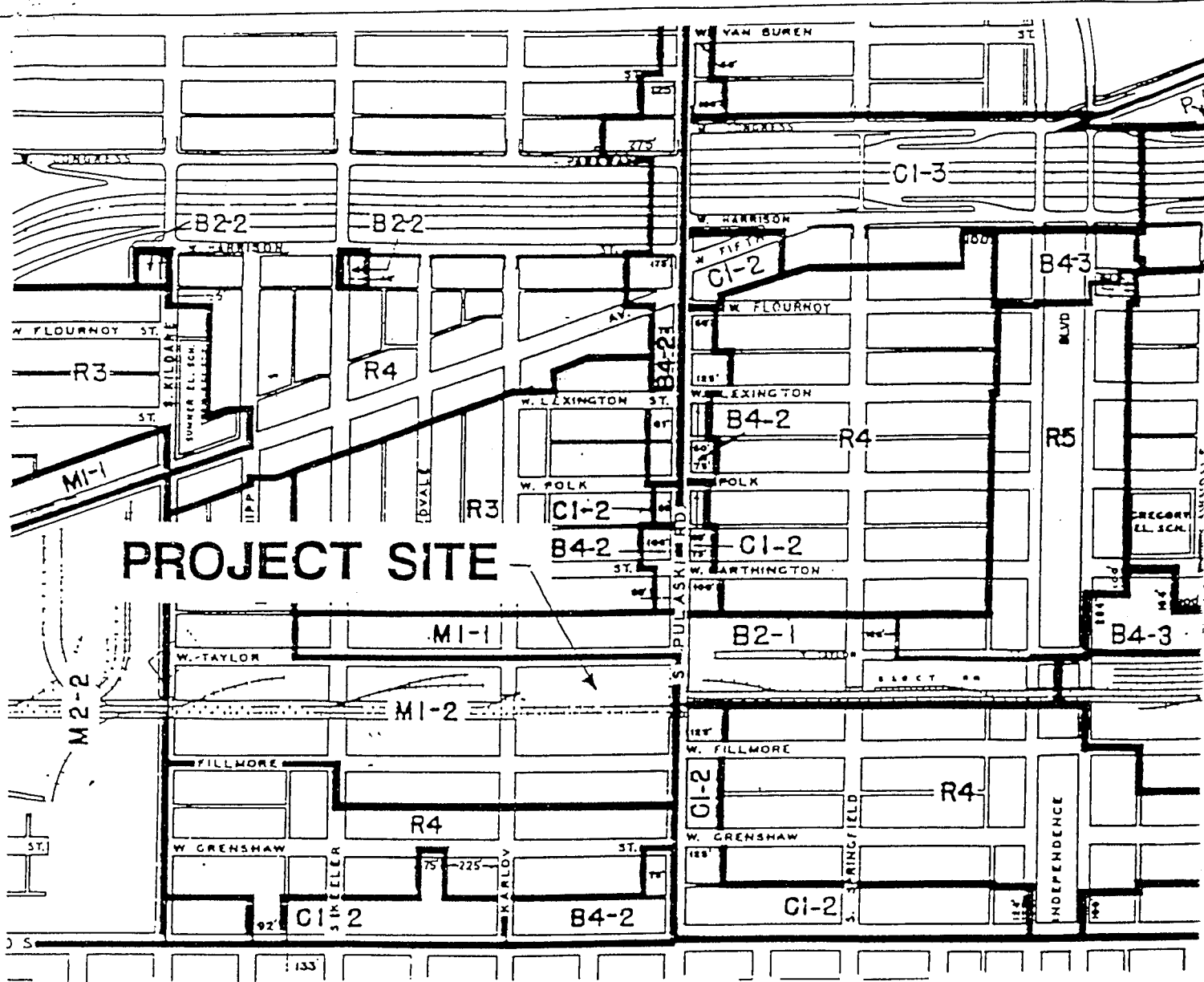
500 ft DISTANCE



C & S RECYCLING, INC.

4001 W. TAYLOR STREET

EXHIBIT "B"



RESIDENCE DISTRICTS

- R1 SINGLE-FAMILY RESIDENCE DISTRICT
- R2 SINGLE-FAMILY RESIDENCE DISTRICT
- R3 GENERAL RESIDENCE DISTRICT
- R4 GENERAL RESIDENCE DISTRICT
- R5 GENERAL RESIDENCE DISTRICT
- R6 GENERAL RESIDENCE DISTRICT
- R7 GENERAL RESIDENCE DISTRICT
- R8 GENERAL RESIDENCE DISTRICT

BUSINESS DISTRICTS

- B1-1 TO B1-5 LOCAL RETAIL DISTRICTS
- B2-1 TO B2-5 RESTRICTED RETAIL DISTRICTS
- B3-1 TO B3-5 GENERAL RETAIL DISTRICTS
- B4-1 TO B4-5 RESTRICTED SERVICE DISTRICTS
- B5-1 TO B5-5 GENERAL SERVICE DISTRICTS
- B6-6 AND B6-7 RESTRICTED CENTRAL BUSINESS DISTRICTS
- B7-5 TO B7-7 GENERAL CENTRAL BUSINESS DISTRICTS

COMMERCIAL DISTRICTS

- CI-1 TO CI-5 RESTRICTED COMMERCIAL DISTRICTS
- C2-1 TO C2-5 GENERAL COMMERCIAL DISTRICTS
- C3-5 TO C3-7 COMMERCIAL-MANUFACTURING DISTRICTS
- C4 MOTOR FREIGHT TERMINAL DISTRICT

MANUFACTURING DISTRICTS

- M1-1 TO M1-5 RESTRICTED MANUFACTURING DISTRICTS
- M2-1 TO M2-5 GENERAL MANUFACTURING DISTRICTS
- M3-1 TO M3-5 HEAVY MANUFACTURING DISTRICT



EXHIBIT "C"

LOCATION ZONING MAP		
C&S RECYCLING		
CHICAGO, ILLINOIS		
McDonough Associates Inc. Engineers/Architects		SHEET NO.
PROJECT NUMBER	SCALE	DATE
	N.S.	6-2-93

ILLINOIS POLLUTION CONTROL BOARD
April 6, 1995

C&S RECYCLING, INC.,)
)
Petitioner,)
)
v.) PCB 95-100
) (Permit Appeal -
) 90-day extension)
)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

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

On March 16, 1995, the Board issued an order concerning the notice of extension of the 35 day permit appeal period pursuant to Section 40(a)(1) of the Act, as amended by P.A. 88-690,¹ filed by C&S Recycling, Inc. (C&S). Noting that it was the first such request filed, the Board stated that it would dismiss the docket if an appeal was not filed "on or before May 11, 1995, the 90th day after February 10, 1995". In so stating, the Board had construed the somewhat ambiguous language of P.A. 88-690 to allow an extension of the appeal period for a total of 90 days.

Today, in PCB 95-105, Saline County Landfill v. IEPA, the Board granted an extension totaling 125 days (35 days plus a 90-day extension), based on petitioner's interpretation of the statutory language, with which the Agency did not disagree.

In the interests of consistency, the Board on its own motion reconsiders its order of March 16, 1995 and modifies its order as follows. The extension will continue for a full 125 days, so that in the event C&S fails to file an appeal on or before June 15, 1995, the Board will dismiss this docket.

IT IS SO ORDERED.

¹ P.A. 88-690 amends Section 40(a)(1) to provide, in pertinent part, the 35-day period for petitioning for a hearing may be 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.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 6th day of April, 1995, by a vote of 7-0.

Dorothy M. Gunn

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board

ILLINOIS POLLUTION CONTROL BOARD
June 22, 1995

C & S RECYCLING, INC.,)
)
Petitioner,)
)
v.) PCB 95-100
) (Permit Appeal-Land)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

ORDER OF THE BOARD (R.C. Flemal):

By order of April 6, 1995 the Board granted C & S Recycling, Inc. (C&S) an extension of time through June 15, 1995 in which to file an appeal of a February 10, 1995 Illinois Environmental Protection Agency (Agency) permit determination.

On June 9, 1995 C&S filed a document which it has designated in the caption as an "Appeal from denial of permit for a transfer station", but which it has titled "Petition for a Hearing and/or Variance". While the petition details the history of the Agency's February 10, 1995 denial of a application for a permit for a municipal waste transfer station, the only relief requested is contained in paragraph seven (7) of the petition, which reads:

"Petitioner, therefore, seeks a hearing and/or variance as Section 22.14 as amended imposes an arbitrary and unreasonable hardship upon Petitioner and a variance is necessary in order for the facility to continue its operations and to employ greater recycling and efficient waste transfer in the City of Chicago."

On June 15, 1995 the Agency filed a Motion to Dismiss Portions of Petitioner's Petition for a Hearing and/or Variance. The Agency interprets the June 9th C&S filing as requesting both a permit appeal and a petition for variance. The Agency argues, among other things, that the petition is insufficient with regards to the required contents of a variance petition as set forth in the Board's procedural rules at 35 Ill. Adm. Code 104.121 and those portions should be dismissed.

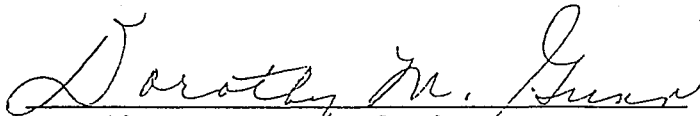
The Board cannot grant a variance from a statutory requirement in a permit appeal pursuant to Section 40 of the Act (415 ILCS 5/40) and 35 Ill. Adm. Code 105. Variance relief pursuant to Section 35 of the Act (415 ILCS 5/35) and 35 Ill. Adm. Code 104 can be granted only for five (5) years, at which time the facility must be in compliance with the Act and regulations.

Petitioner is directed to file, within forty-five (45) days of the date of this order, an amended petition which clarifies whether this action is a permit appeal proceeding or a petition for variance, and which satisfies the informational requirements of 35 Ill. Adm. Code 105 if the action is a permit appeal or of 35 Ill. Adm. Code 104 if the action is a variance request. In the meantime, the Board will continue to treat this matter as a Section 40 permit appeal. The Board's one-hundred-twenty (120) day time clock pursuant to Section 40 will restart upon the filing of an amended petition. If the petitioner intends this action to be a Section 35 variance, the 120-day decision time clock will start upon the filing of a sufficient variance petition.

Given the Board's actions today as to the instant petition, the Agency's motion to dismiss portion of petitioner's petition for a hearing and/or variance is denied.

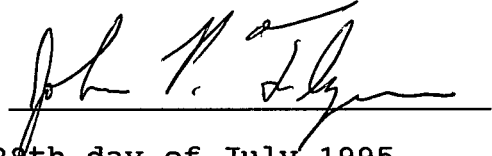
IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 23rd day of June, 1995, by a vote of 6-0.


 Dorothy M. Gunn, Clerk
 Illinois Pollution Control Board

CERTIFICATE OF SERVICE

I, JOHN FLYNN, on oath state that I have served the attached Amended Petition for Permit Appeal and Request for Hearing and Notice of Filing, by personal delivery to the Board and by regular mail to the Agency.

A handwritten signature in cursive script, appearing to read "John Flynn", is written above a horizontal line.

SUBSCRIBED AND SWORN TO BEFORE ME this 28th day of July 1995.

Susan Smolenski
Notary Public

SERVICE LIST

Dorothy M. Gunn
Clerk
Illinois Pollution Control Board
100 W. Randolph Street
Suite 11-500
Chicago, Illinois 60601

Kyle Nash Davis, Esq.
Assistant Counsel
Bureau of Land Division of Legal Counsel
Illinois Environmental Protection Agency
2200 Churchill Road
P.O. Box 19276
Springfield, IL 62794-9276