

ILLINOIS POLLUTION CONTROL BOARD
September 3, 1981

VILLAGE OF WAUCONDA,)
)
) Petitioner,)
)
) v.) PCB 81-12
)
) ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,)
)
) Respondent.)

ORDER OF THE BOARD (by J. Anderson):

On August 17, 1981 the Village of Wauconda petitioned for rehearing of its request for variance which was denied by the Board's Opinion and Order of July 9, 1981. In support of its petition, the Village argues that 1) the operation of the Board's barium standard [Rule 304(B)(4) of Chapter 6] deprives the Village of property without due process of law in that the standard is allegedly unsupported by medical or scientific evidence, 2) the Agency's filing of a negative Recommendation concerning its petition was the filing of an objection which should have triggered a mandatory hearing pursuant to Section 37 of the Environmental Protection Act (Act), and 3) that the Village's original waiver of hearing should not be construed so as to eliminate the Village's right to rebut information contained in the Agency's recommendation.

In its August 24, 1981 Response, the Agency urges that the petition be denied. The Board finds that the Agency's rejoinder to each of these points is apt, and correctly reflects settled interpretations of the Board's procedural rules and the Act. The Village's due process argument could and should have been raised in its original petition, the amended petition it did file, or in an amended petition it could have filed within 7 days of receipt of the Agency's Recommendation pursuant to Procedural Rule 406. This argument is not timely or properly raised in the context of a petition for rehearing.

Hearing in this matter was not mandated by the Act, as the Board has previously held that, consistent with legislative intent, an Agency negative Recommendation filed within 30 days of receipt of a petition pursuant to Procedural Rule 405 will not be construed as an Agency objection pursuant to Section 37 of the Act and Procedural Rule 404. Mississippi River Grain Elevator v. IEPA, PCB 80-19. As aforementioned, the Village could have elected to request hearing after receipt of the Agency's Recommendation, as an early Rule 401(b) waiver of hearing does not extinguish the

clearly stated Rule 406(b) right to request a hearing at a much later stage in the variance process. On the other hand, the Village could also have chosen to rebut information in the Recommendation by filing a Response to it, pursuant to Procedural Rule 401(a). The Board did not construe, and could not have by its rules, a waiver as extinguishing the Village's rebuttal rights.

For the foregoing reasons, the petition for rehearing is hereby denied.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 3rd day of September, 1981 by a vote of 5-0.

Christan L. Moffett
Christan L. Moffett, Clerk
Illinois Pollution Control Board