

ILLINOIS POLLUTION CONTROL BOARD
January 5, 1989

SHELL OIL COMPANY,)
)
Petitioner,)
)
v.) PCB 88-188
)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

ORDER OF THE BOARD (by J. Anderson):

On December 19, 1988, Shell Oil Company (Shell) filed a response to the Board's "more information" Order of November 17, 1988 that addressed Shell's variance petition filed November 16, 1988. The variance petition seeks relief from the Board's noise regulations.

In its response, Shell requests the Board to vacate its prior order. In its "more information" Order, the Board stated in part that "Shell's petition is deficient insofar as it fails to reflect the amended measurement procedures applicable to Section 901 as amended in R83-7."

Shell asserts in its response that it is seeking a variance for constant noise sources, not the fluctuating noise sources for which the measurement procedures were changed in R83-7. Also Shell attached an affidavit of its noise consultant, Mr. George W. Kamperman, attesting to the non-applicability of the R83-7 amendments.

The Board will not vacate its prior order; Shell's response is accepted as an amended petition. The information provided in Shell's response is not contained in its variance petition; pursuant to the Board's procedural rules 35 Ill. Adm. Code 104.121, the Board properly ordered Shell to address R83-7, particularly since the variance petition was silent as to whether the noise sources were asserted to be steady-state or fluctuating.

However, insofar as Shell is concerned about the new due date causing a hardship due to delay in the variance proceeding, the Board will construe Shell's concerns as a request for expedited consideration. In this regard, the Board requests the hearing officer to schedule a hearing in this matter as expeditiously as is practicable.

This matter is accepted for hearing.

Hearing must be scheduled within 14 days of the date of this Order and completed within 60 days of the date of this Order. The hearing officer shall inform the Clerk of the Board of the time and location of the hearing at least 40 days in advance of hearing so that public notice of hearing may be

published. After hearing, the hearing officer shall submit an exhibit list and all actual exhibits to the Board within 5 days of the hearing. Any briefing schedule shall provide for final filings as expeditiously as possible and in no event later than 70 days from the date of this Order.

If after appropriate consultation with the parties, the parties fail to provide an acceptable hearing date or if after an attempt the hearing officer is unable to consult with the parties, the hearing officer shall unilaterally set a hearing date in conformance with the schedule above. This schedule will only provide the Board a very short time period to deliberate and reach a decision before the due date. The hearing officer and the parties are encouraged to expedite this proceeding as much as possible.

Within 10 days of accepting this case, the Hearing Officer shall enter a Hearing Officer Scheduling Order governing completion of the record. That Order shall set a date certain for each aspect of the case including: briefing schedule, hearing date(s), completion of discovery (if necessary) and pre-hearing conference (if necessary). The Hearing Officer Scheduling Order may be modified by entry of a complete new scheduling order conforming with the time requirements below.

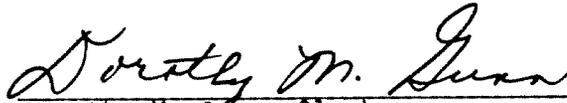
The hearing officer may extend this schedule only on a waiver of the decision deadline by the petitioner and only for the equivalent or fewer number of days that the decision deadline is waived. Such waivers must be provided in writing to the Clerk of the Board. Any waiver must be an "open waiver" or a waiver of decision until a date certain. Any waiver shall extend the time deadline of Section 104.180 regarding filing the Agency Recommendation by the equivalent number of days, but in any circumstance the recommendation must be filed at least 20 days before the hearing.

Because of requirements regarding the publication of notice of hearing, no scheduled hearing may be cancelled unless the petitioner provides an open waiver or a waiver to a date at least 75 days beyond the date of the motion to cancel hearing. This should allow ample time for the Board to republish notice of hearing and receive transcripts from the hearing before the due date. Any order by the hearing officer granting cancellation of hearing shall include a complete new scheduling order with a new hearing date at least 40 days in the future and at least 30 days prior to the new due date and the Clerk of the Board shall be promptly informed of the new schedule.

Because this proceeding is the type for which the Illinois Environmental Protection Act sets a very short statutory deadline for decisionmaking, absent a waiver, the Board will grant extensions or modifications only in unusual circumstances. Any such motion must set forth an alternative schedule for notice, hearing, and final submissions, as well as the deadline for decision, including response time to such a motion. However, no such motion shall negate the obligation of the hearing officer to set a date pursuant to the fourth paragraph of this Order, and to adhere to that Order until modified.

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 5th day of January, 1989, by a vote of 7-0.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board