

ILLINOIS POLLUTION CONTROL BOARD
March 9, 1989

CHEMETCO INC.,)
)
 Petitioner,)
)
 v.) PCB 89-3
)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Respondent.)

ORDER OF THE BOARD (by J.D. Dumelle):

This matter comes before the Board upon a February 14, 1989, motion to dismiss filed the the Illinois Environmental Protection Agency (Agency). On March 1, 1989, Chemetco, Inc., (Chemetco) filed a response. The Board notes that Chemetco's response was not filed within the seven-day response period provided under Section 103.140(c) of the Board's Procedural Rules (35 Ill. Adm. Code 103.140(c)). Nor was Chemetco's response accompanied by a motion for leave to file instanter. Therefore, Chemetco's response is not accepted.

In support of its motion to dismiss the Agency states that on December 2, 1988 the Agency mailed to Chemetco the permit in issue. The Agency states that 35 days after December 2 is January 6, 1989 and that because Chemetco's petition was filed on January 9, 1989, the appeal is late and should be dismissed.

The Board does not agree. Section 101.105(a) of the Board's Procedural Rules (35 Ill. Adm. Code 101.105(a)) states in part:

Section 101.105 Computation of Time

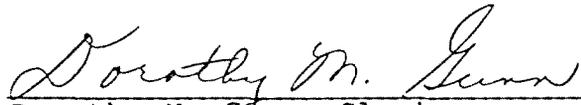
- a) Computation of any period of time prescribed by these rules or the Act shall begin with the first business day following the day on which the act, event, or development occurs and shall run until the end of the last day, or the next following business day if the last day is a Saturday, Sunday, or legal holiday. Where the period of time is five days or less, Saturdays, Sundays and legal holidays shall be excluded in the computation of time.

Thus, the 35-day appeal period begins on the next business day, Monday, December 5, 1988, and ends Monday, January 9, 1989. As Chemetco's petition was filed on January 9, 1989, it is timely filed. The Agency's motion is therefore denied.

The Board notes that the computation of time periods is currently being addressed in the Board's rulemaking proceeding R88-5, Revisions to the Boards Procedural Rules. Until those rules are finally adopted, however, the Board will continue to comply with Section 101.105(a) as written.

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 9th day of March, 1989 by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board