

ILLINOIS POLLUTION CONTROL BOARD  
January 11, 1990

|                        |   |            |
|------------------------|---|------------|
| VILLAGE OF SHOREWOOD,  | ) |            |
|                        | ) |            |
| Petitioner,            | ) |            |
|                        | ) |            |
| v.                     | ) | PCB 89-204 |
|                        | ) | (Variance) |
| ILLINOIS ENVIRONMENTAL | ) |            |
| PROTECTION AGENCY,     | ) |            |
|                        | ) |            |
| Respondent.            | ) |            |

ORDER OF THE BOARD (by B. Forcade):

On December 13, 1989, the Village of Shorewood filed a petition for variance for its facility located in Shorewood, Illinois. The Board found that petition to be deficient and requested more information. On January 8, 1990, the Village of Shorewood filed an amended petition, which restarts the 120-day statutory decision time clock for Board decision. In addition, on January 5, 1990, the Board received an objection to grant of variance. This matter is accepted for hearing.

At hearing, the parties are urged to address whether dry weather flows in the interceptor sewer are at 92.6% of hydraulic capacity as the amended petition seems to imply. The Board notes that pursuant to 35 Ill. Adm. Code 104.200(b) "the hearing officer shall give notice ... at least 21 days before the hearing to ... anyone who has filed an objection to the petition."

The Board notes that on January 11, 1990, it received a letter from the law offices of Defrees & Fiske informing the Board that a fourth family had moved into the subdivision at 302 Harvard Court.

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.

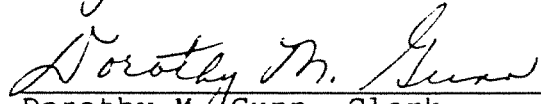
The hearing officer may extend this schedule only on a waiver of the decision deadline by the petitioner and only for the equivalent or fewer number of days that the decision deadline is waived. Such waivers must be provided in writing to the Clerk of the Board. Any waiver must be an "open waiver" or 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 120 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 11<sup>th</sup> day of January, 1990, by a vote of 7-0.

  
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Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board