

ILLINOIS POLLUTION CONTROL BOARD
December 20, 1995

ALLIEDSIGNAL, INC.,)
a Corporation,)
)
Petitioner,)
)
v.) PCB 96-95
) (Permit Appeal - Water)
)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

ORDER OF THE BOARD (by M. McFawn):

On November 16, 1995, the Illinois Environmental Protection Agency (Agency) filed a motion to dismiss this permit appeal on the grounds that it was untimely filed. On November 27, 1995, AlliedSignal Inc. (AlliedSignal) filed its response. On December 6, 1995, the Agency filed a motion for leave to reply and its reply to AlliedSignal's response. Leave to reply is granted.

The Agency argues that this NPDES permit appeal was not timely filed, and therefore the petition should be dismissed for lack of jurisdiction. The Agency's argument is premised upon the 30 day timeframe within which NPDES permit appeals must be filed found at 35 Ill. Adm. Code 105.102(b). AlliedSignal cites to Section 40(a)(1) of the Environmental Protection Act, 415 ILCS 5/1 et seq. ("Act") which establishes a 35 day timeframe for appealing permits denied or conditioned by the Agency pursuant to Section 39 of the Act, which includes NPDES permits. AlliedSignal argues that the statutory timeframe is controlling.

In its reply, the Agency recites that the 30 day timeframe was adopted by the Board at Section 105.102(b) as part of the National Pollutant Discharge Elimination System Regulations, R73-11 & 12, on August 29 and September 5, 1974 pursuant to the mandate contained in Section 13(b) of the Act. The Agency believes that the 30 day limitation for filing a petition was adopted because it parallels the federal regulation which requires a permittee to request an evidentiary hearing to reconsider or contest an NPDES permit within 30 days of the USEPA's final permit decision. (Reply at 4). (See also 40 CFR 124.74.)

The Board has reviewed relevant federal law and its adopting opinion and finds nothing therein which requires the state regulations to parallel the federal procedural rules concerning NPDES evidentiary hearings. While the Board may very well have adopted the 30-day deadline for the reason set forth by the Agency, this portion of Section 105.102(b) is more stringent than

the 35-day deadline provided at Section 40(a)(1) of the Act.

Section 13(b) of the Act provides in pertinent part:

...for the purposes of implementing an NPDES program, the Board shall adopt: (1) Requirements, standards, and procedures which...are necessary and appropriate to enable the State of Illinois to implement and participate in the National Pollutant Discharge Elimination System...All regulations adopted by the Board governing the NPDES program shall be consistent with the applicable provisions of such federal Act and regulations pursuant thereto, and otherwise shall be consistent with all other provisions of this Act,...

(Emphasis added. 415 ILCS 5/13(b))

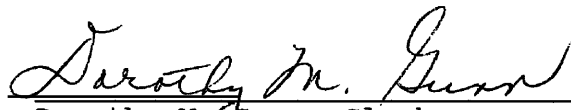
A rule limiting the appeal time to 30 days is not necessary for implementing the State's NPDES program. Pursuant to Section 13(b)(1) of the Act, absent a federal mandate the appeal deadline must be consistent Section 40(a)(1) of the Act. The Board cannot, by rule, lawfully controvert the appeal rights given by the Act. (Landfill, Inc. v. Pollution Control Board, 387 N.E.2d 258 (1978).) Accordingly, the statutory time frame of 35 days is controlling.

The Agency rendered its final decision concerning the contested permit on September 29, 1995. AlliedSignal mailed its appeal on October 27, 1995; the Board received it by mail on October 30, 1995 and filed it on November 1, 1995 upon receipt of the statutory filing fee and requisite number of copies. Thus, this appeal was filed within 35 days of the Agency's final decision on the contested permit.

The Agency's motion to dismiss 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 20th day of December, 1995, by a vote of 7-0.


 Dorothy M. Gunn, Clerk
 Illinois Pollution Control Board