

ILLINOIS POLLUTION CONTROL BOARD

October 5, 2000

IN THE MATTER OF:)
)
PETITION OF THE CITY OF) AS 01-2
GENEVA FOR AN ADJUSTED) (Adjusted Standard - Land)
STANDARD FROM 35 ILL. ADM.)
CODE 807.104)

ORDER OF THE BOARD (by R.C. Flemal):

On July 18, 2000, the City of Geneva (Geneva) filed a petition for an adjusted standard from 35 Ill. Adm. Code 807.104. On August 23, 2000, the Illinois Environmental Protection Agency (Agency) filed a recommendation that the Board deny the petition. On September 25, 2000, Geneva filed a motion to schedule a site visit (motion). In the motion, Geneva requests that a Board member attend a site visit of the Geneva sewage treatment plant (plant). On September 27, 2000, the Agency filed a response to the motion, which included a motion to strike (response). On September 29, 2000, Geneva filed a motion for leave to file a reply *instanter* to the Agency's response. The Board grants the motion to file a reply *instanter*. For the reasons set forth below, the Board denies the motion to schedule a site visit and grants the motion to strike.

Site visits are not addressed in the Board's rules in Part 106 governing adjusted standards. Section 101.100(b) of the Board's procedural rules, state in pertinent part:

However, in absence of a specific provision in these procedural rules to govern a particular situation, the parties or participants may argue that a particular provision of the Code of Civil Procedure or the Illinois Supreme Court Rules provides guidance for the Board or hearing officer. 35 Ill. Adm. Code 101.100(b).

Neither of the parties have argued that either the Code of Civil Procedure, or the Illinois Supreme Court Rules apply to motion. However, Section 101.100(a) of the Board's procedural states, in pertinent part:

[I]n the event of a conflict between the rules of this Part and subsequent Parts, the more specific requirement of the subsequent Part applies. 35 Ill. Adm. Code 101.100(a).

There is no conflict between parts of the procedural rules in this instance, however the enforcement provisions for Part 103 "apply where applicable" to proceedings under other parts. Part 103 addresses site visits. Pursuant to 35 Ill. Adm. Code 103.207:

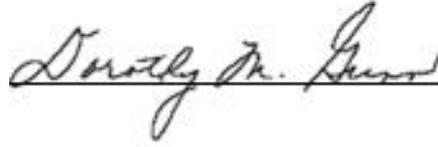
Upon motion of any party or upon the Hearing Officer's own motion, the Hearing Officer and any Board Members present may view the premises in question to establish a more comprehensive record but no such viewing by less than the whole Board shall be made if any party objects. No stenographic record need be taken of what transpires at the viewing. 35 Ill. Adm. Code 103.207.

In its response, the Agency objects to Geneva's motion. Resp. at 2. Therefore, a site visit is only permissible under Section 103.207 if every member of the Board attends the visit. The Board declines to visit the plant. Therefore, the motion to schedule a site visit is denied.

The Agency further argues that the Board should strike Geneva's assertion that the Agency "authorized" Geneva to use the waste material at issue in this case as backfill material. Resp. at 3. In its reply, Geneva explains that it did not intend to imply that the Agency had take formal action on the fill project. Reply at 1. Rather, Geneva believed the Agency found the plan acceptable. Reply at 1. The Board grants the motion to strike.

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 October 2000 by a vote of 7-0.

A handwritten signature in cursive script that reads "Dorothy M. Gunn". The signature is written in black ink and is positioned above a solid horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board