

ILLINOIS POLLUTION CONTROL BOARD
August 10, 1989

IN THE MATTER OF:)
)
GROUNDWATER PROTECTION REGULATIONS FOR)
EXISTING AND NEW ACTIVITIES WITHIN) R89-5
SETBACK ZONES AND REGULATED RECHARGE)
AREAS (35 ILL. ADM. CODE 615 AND 616))

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

On July 26, 1989, the Hearing Officer received a letter from the Illinois Fertilizer and Chemical Association ("IFCA") requesting that the post hearing comment period be extended an additional 60 days and for additional hearing. The letter was received by the Board on July 31, 1989 and docketed as Public Comment #6. The Hearing Officer construed this letter as a motion and has instructed IFCA to serve copies of the motion on those persons on the service list. The Hearing Officer further requested that the Board address this motion.

The post hearing comment period expired on August 1, 1989. Although IFCA submitted some comments by the August 1, 1989 deadline, it apparently wishes to submit additional comments. The Board further observes that some comments from other commenters were received a few days late, apparently due to mail delivery delays.

In support of its motion, IFCA states that at hearing a number of questions were posed to the Agency which the Agency opted to answer or supplement in its post hearing comments. IFCA believes that the Agency's comments and its supplemental answers will not be available for sufficient review and comment by it and others before the close of the comment period. IFCA further requests additional hearing in order to present testimony and answer any questions the Board may have.

On July 31, 1989, the Agency objected to IFCA's motion, stating that a representative of IFCA appeared at the May 17, 1989 hearing, questioned Agency witnesses, and had ample opportunity to provide testimony at that time. The Agency further objected to the extension of the comment period for reasons related to the need for orderly proceedings and proper closure of comment periods (Public Comment #9 at 23-25).

The purpose of the post hearing comment period is to allow for comment upon the proposal as presented at hearing. Sufficient time has been allowed for this purpose. It is necessary to further emphasize that this proposal has not yet

been adopted by the Board for First Notice nor has it been published in the Illinois Register for First Notice. Section 5.01 of the Illinois Administrative Procedure Act ("APA") requires the Board to submit proposed rules for First Notice publication in the Illinois Register and, among other things, requires a minimum of 45 days for comment upon such proposal. Changes to a proposal may be made in response to comments received.

It is the Board's intent to proceed with a proposal for First Notice at its next regularly scheduled Board meeting or at a time shortly thereafter, and to provide for an extensive comment period thereafter.

The Board believes that since additional time will be available for comment upon both Agency and Board action on this proposal after First Notice publication, an extension of the post hearing comment period will be granted only to the extent that late filed comments received to date will be accepted and reviewed to the extent possible consistent with the Board's intent to proceed to First Notice by the next regularly scheduled Board meeting or a time shortly thereafter. IFCA is free to submit any additional comments it has on the Agency's answers to hearing questions during the subsequent comment period. Regarding any additional hearings, the Board notes that an EcIS will be prepared and submitted in this proceeding, thereby requiring additional hearings to be held on matters addressed in the EcIS. Additional hearing time may be utilized for other matters pertaining to the proposal as necessary upon review of comments and any requests for hearing filed with the Board after First Notice publication as provided in Section 5.01 of the APA.

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 104 day of August, 1989, by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board