

ILLINOIS POLLUTION CONTROL BOARD
June 15, 1995

JOHN C. JUSTICE, d/b/a/)
MICROCOSM,)
)
Petitioner,)
)
v.) PCB 95-112
) (Permit Appeal - Air)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

ORDER OF THE BOARD (by C.A. Manning):

This matter is before the Board on an operating permit appeal filed *pro se* by John C. Justice, doing business as Microcosm on March 28, 1995. The Board accepted the petition for hearing on April 6, 1995 and subsequently the Board received a waiver of the decision deadline on April 14, 1995, waiving the statutory decision due date in this case until October 30, 1995. On April 20, 1995, the Illinois Environmental Protection Agency (Agency) filed a motion to dismiss the permit appeal challenging the sufficiency of the pleading (35 Ill. Adm. Code 101.243) to which the petitioner filed a response on June 5, 1995.

The Agency argues that dismissal is proper because the permit appeal does not satisfy the Board's informational requirements of 35 Ill. Adm. Code 105.102. According to the Agency, the petition fails to: (1) cite particular standards under which the operating permit was being sought (Section 105.102(a)(2)(A)); (2) reference a complete and precise description of the facility, equipment, vehicle, vessel or aircraft for which a permit is sought, including its location (Section 105.102(a)(2)(B)); (3) include a complete description of contaminant emissions and of proposed methods for their control (Section 105.102(a)(2)(C)); and (4) submit or reference any other materials necessary to demonstrate that Petitioner's activity will not cause a violation of the Illinois Environmental Protection Act or applicable regulations (Section 105.102(a)(2)(D).)

In response, Mr. Justice states that (1) the Board ordered the Agency to submit the record on appeal when it accepted this case; (2) any documents or records that the Agency believes to be missing are not in the possession of the petitioner; and (3) due process requires a hearing in the case of a permit denial.

The Agency is correct that the petition does not satisfy the informational requirements of Part 105, especially as they relate to the facility description. However, as this material is always included in the Agency's record and as the Board's review in this

type of permit appeal is restricted to review of the record, the Board has not heretofore required strict compliance with the portion of Part 105 prior to accepting a petition.¹ While we understand the concerns stated in the Agency's dismissal request regarding lack of information in the petition, the Board can not, in this case, begin requiring strict compliance. We note, however, that we are in the process of reviewing our procedural rules in Docket R95-1, and that the public, as well as the Agency and the regulated community, will have a full and complete opportunity to comment concerning any of the Board's new procedures.

We hereby deny the Agency's motion to dismiss. We direct the Agency to file the record, and we direct that the hearing officer hold a pre-hearing conference so that the parties may determine what information must be provided prior to hearing. Additionally, any requests for stay or for a negotiation schedule shall be at the discretion of the hearing officer, consistent with the decision deadline in this matter.

This matter is accepted for hearing. The hearing must be scheduled and completed in a timely manner, consistent with Board practices and the applicable statutory decision deadline, or the decision deadline as extended by a waiver (petitioner may file a waiver of the statutory decision deadline pursuant to 35 Ill. Adm. Code 101.105). We also direct the hearing officer to hold a pre-hearing conference so that the parties may determine what, if any information, must be provided to one another, or to the Board, prior to hearing. Additionally, the hearing schedule and any requests for stay or for a negotiation schedule shall be at the discretion of the hearing officer.

The assigned 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, a statement regarding credibility of witnesses and all actual exhibits to the Board within five days of the hearing. Any briefing schedule shall provide for final filings as expeditiously as possible and, in time-limited cases, no later than 30 days prior to the decision due date, which is the final regularly scheduled Board meeting date on or before the statutory or deferred decision deadline. Absent any future waivers of the decision deadline, the statutory decision deadline is now October

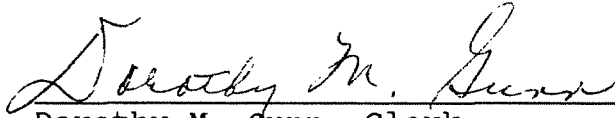
¹ We note that the Agency's record was due to have been transmitted to the Board within 14 days of the Agency's receipt of notice of the petition, which in this case would have been April 17, 1995. (35 Ill. Adm. Code Section 105.102(a)(4).) It has not yet been filed.

30, 1995 (pursuant to the petitioner's waiver of April 14, 1995); the Board meeting immediately preceding the due date is scheduled for October 19, 1995.

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. The hearing officer and the parties are encouraged to expedite this proceeding as much as possible.

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 15th day of June, 1995, by a vote of 6-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board