

ILLINOIS POLLUTION CONTROL BOARD
October 6, 1994

CATERPILLAR, INC.,)	
)	
Petitioner,)	
)	
v.)	
)	
ILLINOIS ENVIRONMENTAL)	PCB 94-198
PROTECTION AGENCY,)	(Variance)
)	
Respondent,)	
)	
and)	
)	
INTERNATIONAL UNION, UNITED)	
AUTOMOBILE, AEROSPACE AND)	
AGRICULTURAL IMPLEMENT WORKERS)	
OF AMERICA and LOCAL 974,)	
)	
Intervenors.)	

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

This matter is before the Board on a motion to strike objections filed by Rone and Fidler filed September 13, 1994 by Caterpillar, Inc. (Caterpillar)¹. Relevant history is as follows: On July 21, 1994 Caterpillar, filed a petition for variance from the requirements to file a significant modification application found at 35 Ill. Adm. Code 814.104(c). On August 18, 1994 Steve Rone filed an objection to Caterpillar's request, and on August 24, 1994, August 25, 1994, and August 29, 1994, J.G. Fidler filed objections and requests for hearing joined by a number of other individuals.

No response has been filed to the motion to strike.

Caterpillar alleges that these objections should be stricken from the record as not timely filed. The Board has interpreted Section 37 of the Environmental Protection Act as providing that any person may file a written objection to the grant of a

¹ The motion to strike objections was also accompanied by a motion for a hearing officer order to limit the scope of hearing. The hearing in this matter has been continued per hearing officer order of September 13, 1994. As for the motion for the hearing officer order to limit the scope of hearing, the Board refers that motion to the hearing officer for the hearing to be held at a later time.

variance within 21 days of filing of the petition for variance. Section 104.141 of the Board's procedural rules provides:

Any person may file with the Clerk, within 21 days after the filing of the petition, a written objection to the grant of the variance. * * * A copy of such objection shall be mailed to the petitioner and the Agency by the Clerk.

Thereby, in order to be timely, an objection to a variance petition must be filed within 21 days of the filing of the variance petition.

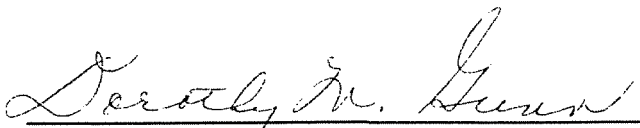
However, there is a special circumstance in the instant matter that requires us to look beyond 35 Ill. Adm. Code 104.141. Pursuant to Section 104.140 of the Board's procedural rules, within 10 days after a petition for variance is filed, the Agency must publish notice of the petition in a newspaper of general circulation in the county in which the installation or property is located for which the variance is sought. The Agency published notice of the instant variance petition on August 6, 1994, 11 days after the petition was filed. The published notice stated that objections to the variance petition could be filed "within 21 days from publication of this notice" (emphasis added).

Because the objectors filed their objections within 21 days after notice of the petition was published, we will construe the objections as timely filed, despite the fact that they were published more than 21 days after the filing of the petition. The Board will not penalize the objectors for an error in the publication notice upon which they apparently relied. (See also, Illinois Landfill, Inc. v. Illinois Environmental Protection Agency (September 15, 1994), PCB 94-200 ___ PCB___.)

For the above reasons, the Board denies the motions to strike the objections made by Rone and Fidler.

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 6th day of October, 1994, by a vote of 6-0.


 Dorothy M. Gunn, Clerk
 Illinois Pollution Control Board