

ILLINOIS POLLUTION CONTROL BOARD
March 16, 1995

THE JOINT PETITION OF THE)
ILLINOIS ENVIRONMENTAL PROTECTION)
AGENCY AND THE CITY OF METROPOLIS)
FOR AN ADJUSTED STANDARD FROM) AS 95-2
35 ILL. ADM. CODE PART 304 FOR) (Adjusted Standard-Water)
SUSPENDED SOLIDS, 5-DAY BIOLOGICAL)
OXYGEN DEMAND AND AMMONIA NITROGEN)

ORDER OF THE BOARD (by J. Yi):

This matter is before the Board on a joint petition filed by the Illinois Environmental Protection Agency (Agency) and the City of Metropolis (City) for adjusted standard regarding the City's wastewater treatment plant. The Agency and the City filed this matter pursuant to Section 27 of the Environmental Protection Act (Act) and 35 Ill. Adm. Code Part 106. (415 ILCS 5/27 (1992).) Petitioners have requested a hearing. The Board, in its order of February 9, 1995, granted petitioners' motions to incorporate previous filings in AS 94-17 and waiver of the filing requirements. However, the Board did not set this matter for hearing because we had not received the certification of publication required pursuant to Section 28.1(d)(1) of the Act and Board regulations at 35 Ill. Adm. Code 106.711 and 106.712. (415 ILCS 5/28.1(d)(1) (1992).)

On February 24, 1995, petitioners filed with the Board the certification of publication. The notification met all content requirements as set forth at 35 Ill. Adm. Code 106.711. However, according to the certification it was not published in the local paper until February 22, 1995. Pursuant to 35 Ill. Adm. Code 106.711, petitioner is required to publish notice of the filing of the petition in a newspaper of general circulation in the area likely to be affected within 14 days of filing the petition. (See also 415 ILCS 5/28.1(d)(1).) Therefore, the publication of the notice was two days late.

The Board in The Matter of the Petition of the Rhone-Poulenc Basin Chemical Company, (January 20, 1994), AS 93-9, stated that:

35 Ill. Adm. Code 106.711 and Section 28.1 of the Environmental Protection Act require that a petitioner for adjusted standard publish newspaper notice of the petition within 14 days after the date that the petition is filed with the Board. Petitioner states that publication did not occur within the fourteen days, but rather occurred within 22 days (eight days late). Publication of notice of filing is jurisdictional. (See, e.g., Leroy Brown & Sons, Inc.,

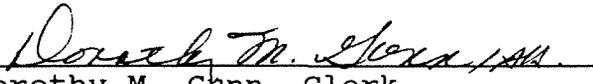
v. County Board (February 4, 1993) PCB 92-132, 139 PCB 51; citing Kane County Defenders, Inc. v. PCB (2nd Dist. 1985), 139 Ill. App. 3d 588, 487 N.E. 2d 743, and Illinois Power Company v. PCB (4th Dist. 1985), 137 Ill. App. 3d 499, 484 N.E. 2d 898.) Since the publication did not occur within the statutorily prescribed 14-day period, the Board does not have jurisdiction to hear the petition.

Thus, the Board has previously determined that timely publication of notice within 14 days of filing is a jurisdictional requirement that must be met in order for the Board to have statutory authority to hear the matter. The Board therefore lacks the jurisdiction to hear this matter. This matter is dismissed and the Clerk of the Board is directed to close the docket in this matter.

Petitioner may refile the petition and publish notice of the new petition within 14 days of that filing in order to correct the defective notice. The Board directs the Clerk's office to waive the filing fee if petitioner so chooses to refile. Additionally, the Clerk's office immediately upon the filing of the petition shall notify petitioner of the date of filing and docket number assigned to this matter.

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 16th day of March, 1995, by a vote of 7-0.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board