

ILLINOIS POLLUTION CONTROL BOARD
July 11, 1991

INDIAN REFINING LIMITED)	
PARTNERSHIP,)	
)	
Petitioner,)	
)	
v.)	PCB 91-110
)	(Permit Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

ORDER OF THE BOARD by (M. Nardulli):

This matter is before the Board on petitioner Indian Refining Limited Partnership's filing of a petition for review challenging the Illinois Environmental Protection Agency's (Agency) denial of petitioner's renewal applications for operating permits.

Section 40(a)(1) of the Environmental Protection Act (Ill. Rev. Stat. 1989, ch. 111 1/2, par. 1040(a)(1)) provides that an applicant may seek review of the Agency's permit decision by filing a petition for hearing with the Board within 35 days. Section 105.102(a)(2) of the Board's procedural rules governing permit appeals provides that such a petition for hearing shall be filed with the Board "within 35 days of the date of mailing of the Agency's final decision." (35 Ill. Adm. Code 105.102(a)(2).)

Here, petitioner states that "by letter dated may 16, 1991, the Agency denied the Renewal Applications" 35 days from May 16, 1991 is June 20, 1991.¹ Petitioner's petition for hearing was date-stamped by the Clerk on June 25, 1991. Because the petition for hearing is date-stamped after the due date "the time of mailing shall be deemed the time of filing." (35 Ill. Adm. Code 101.102(d).) Hence, the Board must look to petitioner's proof of service to determine the date of filing. (35 Ill. Adm. Code 101.143(a)(1).) Petitioner's certificate of service states only that the petition was served on the Agency by certified mail on June 24, 1991, four days after June 20, 1991. The only reference

¹ Section 101.109 of the Board's general procedural rules provides that "[c]omputation of any period of time prescribed by this Chapter or the Act shall begin with the first calendar day following the day on which the act, event, or development occurs and shall run until the end of the last day, or next business day if the last day is a Saturday, Sunday or national or state legal holiday." (35 Ill. Adm. Code 101.109.)

to filing with the Board is in petitioner's notice of filing which states that the petition was filed with the Board on June 24, 1991.

Based upon the above, it appears that the petition for hearing is untimely filed. The Board directs the parties to address the issue of timeliness of the filing of the instant petition by filing simultaneous responses to this order to be received by the Board no later than 4:30 p.m. on July 22, 1991. In particular, the Board directs the parties' attention to the Board's decision in Finks & Austman v. IEPA, PCB 90-243 (February 7, 1991).

Although the Board questions the timeliness of the instant filing and, hence whether the Board has jurisdiction, because the Board has a decision deadline in this permit appeal, this matter will be set for hearing subject to the outcome of the timeliness issue. The Board notes that the time period within which the hearing officer must schedule the hearing has been adjusted to accommodate the July 22, 1991 filings of the parties pursuant to the above discussion.

Hearing must be scheduled within 18 days of the date of this Order and completed within 60 days of the date of this Order. The 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, and all actual exhibits to the Board within 5 days of the hearing. Any briefing schedule shall provide for final filings as expeditiously as possible and in no event later than 70 days from the date of this Order.

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. This schedule will only provide the Board a very short time period to deliberate and reach a decision before the due date. The hearing officer and the parties are encouraged to expedite this proceeding as much as possible.

Within 10 days of accepting this case, the Hearing Officer shall enter a Hearing Officer Scheduling Order governing completion of the record. That Order shall set a date certain for each aspect of the case including: briefing schedule, hearing date(s), completion of discovery (if necessary) and pre-hearing conference (if necessary). The Hearing Officer Scheduling Order may be modified by entry of a complete new scheduling order conforming with the time requirements below.

The hearing officer may extend this schedule only on a waiver of the decision deadline by the petitioner and only for the

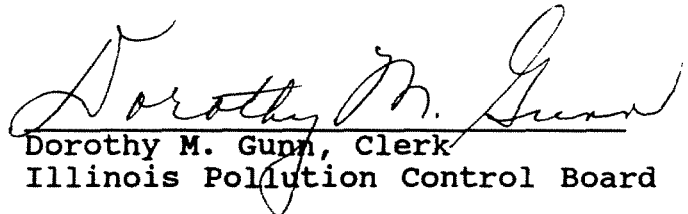
equivalent or fewer number of days that the decision deadline is waived. Such waivers must be provided in writing to the Clerk of the Board. Any waiver must be an "open waiver" or a waiver of decision until a date certain.

Because of requirements regarding the publication of notice of hearing, no scheduled hearing may be canceled unless the petitioner provides an open waiver or a waiver to a date at least 120 days beyond the date of the motion to cancel hearing. This should allow ample time for the Board to republish notice of hearing and receive transcripts from the hearing before the due date. Any order by the hearing officer granting cancellation of hearing shall include a complete new scheduling order with a new hearing date at least 40 days in the future and at least 30 days prior to the new due date and the Clerk of the Board shall be promptly informed of the new schedule.

Because this proceeding is the type for which the Illinois Environmental Protection Act sets a very short statutory deadline for making a decision, absent a waiver, the Board will grant extensions or modifications only in unusual circumstances. Any such motion must set forth an alternative schedule for notice, hearing, and final submissions, as well as the deadline for decision, including response time to such a motion. However, no such motion shall negate the obligation of the hearing officer to establish a Scheduling Order pursuant to the requirements of this Order, and to adhere to that Order until modified.

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 11th day of July, 1991 by a vote of 7-0.


 Dorothy M. Gunn, Clerk
 Illinois Pollution Control Board