

ILLINOIS POLLUTION CONTROL BOARD
August 22, 1991

R. LAVIN & SONS, INC.)
)
 Petitioner,)
)
 v.) PCB 91-139
) (Permit Appeal)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Respondent.)

ORDER OF THE BOARD (by B. Forcade):

On August 15, 1991, R. Lavin & Sons, Inc. ("Lavin") filed a petition to contest conditions imposed on an NPDES permit by the Illinois Environmental Protection Agency. The Board notes that this petition appears to be timely filed pursuant to Section 40 of the Illinois Environmental Protection Act ("Act"). However, the Board finds that the petition is deficient, in that it does not fulfill the requirements of 35 Ill. Adm. Code 105.102(a)(2), which states in pertinent part:

In the case of a denial of a permit or issuance by the Agency of a permit with one or more conditions or limitations to which an applicant objects, an applicant who seeks to appeal the Agency decision shall file a petition for a hearing before the Board within 35 days of the date of mailing of the Agency's final decision. The petition shall include:

- (A) Citation of the particular standards under which a permit is sought;

* * * *

- (D) Such other materials as may be necessary to demonstrate that the activity for which the permit is sought will not cause a violation of the Act or the regulations.

Specifically, the petition for review seeks to modify requirements in the NPDES permit to reflect the provisions of a consent order entered in People of the State of Illinois v. R. Lavin & Sons, Lake County Circuit Court #90 CH 668, October 12, 1990 regarding NPDES discharges from the subject facility. Lavin asserts that the consent order, "...imposes certain obligations on both the state and [Lavin] with regard to the permit." Those claimed obligations include interim limits, restrictions on effluent limits which may be set by the Agency, effective dates, monitoring obligations, and provisions for amendment or modification of the terms of the consent order. (Pet. p.2-3).

The petition before the Board is deficient in that it does not provide the Board with a copy of this consent order. Further, the Board questions whether this is not, in fact, an action seeking to enforce the terms of the consent order entered by the Circuit Court of Lake County and whether as such it would more properly be brought before that tribunal. The Board requests memoranda from the parties to be received at the Board not later than September 23, 1991 addressing this Board's jurisdiction to hear this action.

Unless an amended petition is filed within 45 days of the date of this Order, curing the above-noted defect(s), this matter will be subject to dismissal. The Board notes that for purposes of calculation of a decision deadline pursuant to Section 40 of the Act, the filing of an amended petition will restart the calculation of the Board's 120 day deadline.

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 22nd day of August, 1991, by a vote of 7-0.

Dorothy M. Gunn, Clerk
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Illinois Pollution Control Board