

ILLINOIS POLLUTION CONTROL BOARD
September 26, 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 the August 29, 1991 filing of petitioner's motion for reconsideration. Petitioner asks that the Board reconsider and reverse its July 25, 1991 order dismissing petitioner's permit appeal petition as untimely filed pursuant to 35 Ill. Adm. Code 105.102(a)(2).

In its motion, petitioner asserts that the Board should apply the "mailed is filed" rule (35 Ill. Adm. Code 101.102(d)) to the instant filing or, in the alternative, waive its procedural rule which provides that all documents received after 4:30 p.m. will be deemed filed the following day (35 Ill. Adm. Code 101.102(a) and (b)). Petitioner correctly states that the "mailed is filed" rule was adopted to avoid prejudice to persons not located in the Chicago area. (In the Matter of: Procedural Rules Revision 35 Ill. Adm. Code 101, 106 (Subpart G) and 107, R88-5(A) at 5 (June 5, 1989).) The Board noted in its dismissal order that, had petitioner mailed its petition on the day it attempted to personally file it, the petition would be deemed timely filed. Petitioner does not allege that it was in any way prevented from mailing its petition. While the Board recognizes that petitioner could have availed itself of the "mailed is filed" rule, it did not, and the Board will not strain to extend the application of this rule to the instant case.

Relying on Browning-Ferris Industries of Iowa v. IEPA, PCB 83-85 (September 8, 1983), petitioner states that the Board has in the past waived its procedural rules. In Browning-Ferris the Board waived the procedural rule requiring the Agency to file its permit record within a certain time (35 Ill. Adm. Code 105.102(a)(4)) and denied Browning-Ferris' motion to dismiss its permit appeal and enter judgment in its favor. However, unlike the timely filing of a permit appeal petition, the Agency's filing of the record does not confer jurisdiction upon the Board. While the Board may waive its procedural rules regarding the filing of the Agency record and may allow parties to file briefs after the time set by the hearing

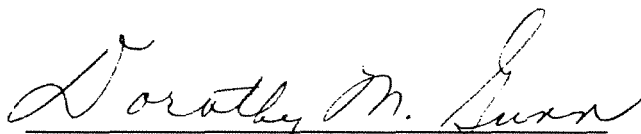
officer, the Board cannot waive the filing date for petitions which confer jurisdiction upon the Board.

The Board has reconsidered its July 25, 1991 order dismissing petitioner's permit appeal and affirms that dismissal.

Section 41 of the Environmental Protection Act (Ill. Rev. Stat. 1989, ch. 111 1/2, par. 1041) provides for appeal of final orders of the Board within 35 days. The rules of the Supreme Court of Illinois establish filing requirements.

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 26th day of September, 1991 by a vote of 7-0.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board