

ILLINOIS POLLUTION CONTROL BOARD  
February 22, 1990

THE CITY OF METROPOLIS,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 90-8
	)	(Permit Appeal)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Respondent.	)	

ORDER OF THE BOARD (by J. Theodore Meyer):

This matter is before the Board on two motions. On February 5, 1990, the City of Metropolis (City) filed a motion for summary judgment. The Illinois Environmental Protection Agency (Agency) filed its response in opposition to that motion on February 13, 1990. Additionally, on February 13, 1990 the Agency filed a motion to file its permit record instanter. The Agency's motion to file the record instanter is granted.

The City seeks summary judgment in this permit appeal based upon the fact that the Agency's letter denying the City's permit application did not contain information required by Section 39(a) of the Environmental Protection Act (Act). Ill.Rev.Stat. 1987, ch. 111 1/2, par. 1039(a). Although the denial letter contains reasons for the Agency's decision, the letter does not specify either the sections of the Act or the applicable regulations which might be violated if the permit was granted, as required by Section 39(a)(1) and (2). The City contends that because the permit denial letter failed to meet all statutory requirements, that denial was null and void. Therefore, the City asserts that the Board should grant summary judgment and enter an order reversing the permit denial and directing the Agency to issue the permit.

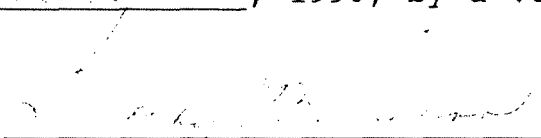
In response, the Agency maintains that Section 39(a) primarily requires the Agency to inform the applicant of specific reasons why the permit was denied. The Agency contends that the information included in the instant denial letter can be construed to give the applicant an indication of the sections of the Act and the regulations which are of concern to the Agency. Finally, the Agency cites Mathers v. Pollution Control Board, 107 Ill.App.3d 729, 438 N.E.2d 213 (3d Dist., 1982), for the proposition that even where a denial letter does not include some of the information required by Section 39(a), the evidence presented at hearing is to be evaluated to determine whether the applicant has met his burden of proving that no violation of the Act would occur if the requested permit was granted. Therefore, the Agency argues that

summary judgment is not appropriate in this case.

After reviewing the parties' claims, the Board will deny the City's motion for summary judgment. The City is correct that the Agency denial letter does not contain some information required by Section 39(a). However, the letter does contain sufficient information to inform the City as to the basis for the Agency's denial. The Board rejects the petitioner's claim that the Agency's failure to comply with all of the statutory requirements renders the denial letter null and void. The Board finds that the Agency issued its denial letter in a timely fashion, and will not order the issuance of the permit by operation of law simply because the Agency's denial letter is incomplete. The intent of Section 39(a) is to require the Agency to issue its decision in a timely manner, with information sufficient for the applicant to determine the basis for the Agency's determination. The denial letter in this case satisfied those aims, and therefore the motion for summary judgment is denied. However, the language of Section 39(a) is clear that the Agency must specifically set forth the applicable sections of the Act and the regulations upon which it based its denial. Compliance with this requirement helps focus the Board's review of this permit denial appeal. Therefore, the Agency shall provide the missing information to the City and the Board within 14 days of the date of this Order.

IT IS SO ORDERED.

I, Dorothy M. Gunn, hereby certify that the above Order was adopted on the        day of           , 1990, by a vote of       .

  
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 Dorothy M. Gunn, Clerk  
 Illinois Pollution Control Board