

ILLINOIS POLLUTION CONTROL BOARD
September 13, 1990

CITY OF MONMOUTH,)
)
 Petitioner,)
)
 v.) PCB 90-147
) (Permit appeal)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Respondent.)

ORDER OF THE BOARD (by M. Nardulli):

This matter comes before the Board on a motion to dismiss permit appeal filed August 16, 1990 by respondent Illinois Environmental Protection Agency (Agency). Petitioner has not filed a response to the Agency's motion.

The Agency states that this permit appeal should be dismissed as being untimely filed. Although the Agency states that permit appeals must be filed within 30 days, it is clear that a permit appeal must be filed with the Board no later than 35 days from the date of the Agency's permit decision. (Ill. Rev. Stat. 1989, ch. 111 1/2, par. 1041(a)(1); 35 Ill. Adm. Code 105.102(b)(4).) The Agency's final permit decision in this case was mailed to petitioner on July 2, 1990 so that the permit appeal was due to be filed with the Board no later than August 6, 1990. Petitioner's permit appeal was timely filed with the Board on August 6, 1990. Therefore, the motion to dismiss is denied.

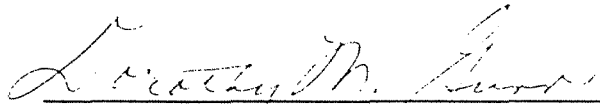
The Board also notes that it received a letter from the hearing officer stating that it is his impression that petitioner's letter of August 6, 1990 was not intended as a permit appeal but rather that petitioner is seeking Agency reconsideration of the imposition of a condition in the permit. However, petitioner did pay the filing fee required by the Board in permit appeals. Because the Board would not have jurisdiction to review the Agency's permit decision while a motion for reconsideration is pending before the Agency in this matter, petitioner is hereby directed to file a response to this Order with the Board no later than September 24, 1990 with proper service on the Agency stating whether it intended its August 6, 1990 letter to be a permit appeal to the Board or a motion for reconsideration to the Agency.

Lastly, if it is petitioner's intent to proceed with this permit appeal before the Board, the Board finds that petitioner's petition contains insufficient information. Should petitioner seek to go forward with this permit appeal rather than seeking Agency reconsideration, petitioner is directed to file an amended permit appeal in accordance with 35 Ill Adm. Code 105.102(a)(2) which sets forth the information to be included in a permit appeal. The Board

notes that the statutory time period for the Board's decision deadline would begin again upon the filing of the amended petition. Petitioner's amended petition shall be filed with the Board no later than 45 days from the date of this order or this matter is subject to dismissal.

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 15th day of September, 1990, by a vote of 7-0.



Dorothy M. Gunn
Dorothy M. Gunn, Clerk
Illinois Pollution Control Board