

ILLINOIS POLLUTION CONTROL BOARD
January 24, 1985

WILLIAM H. CLARKE and)
PIONEER PROCESSING, INC.,)
)
Petitioners,)
)
v.) PCB 84-150
)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

ORDER OF THE BOARD (by J. D. Dumelle):

This matter comes before the Board upon a January 10, 1985 petition for intervention filed on behalf of the County of LaSalle, Rosemary Sinon, Marie Madden and Joan Benya Bernabei requesting leave to intervene in this matter "provided that the time for the Board to make its decision be extended to a date ninety (90) days from the date leave to intervene is granted." William H. Clarke and Pioneer Processing, Inc. (Petitioners) responded on January 22, 1985. The County of LaSalle, et al., replied to the response on January 23, 1985.

Petitioners recommend that the Board "consider the LaSalle County, et al., prayer for relief as an unconditional request for leave to intervene, coupled with a simultaneous request for continuance" arguing that there is no basis for a conditional request to intervene. No law is cited in support of that contention. A plain reading of the request indicates that LaSalle County, et al., does not desire to request intervention unless the decision date is extended: this is clear from the use of the words "provided that." The Board sees no reason why a request for intervention cannot be conditioned on the occurrence of some definite event.

In this case the condition has not been fulfilled. In a permit appeal proceeding the statutory right of a decision within 90 days runs to the petitioner and can be extended by the petitioner only by express waiver or by actions through which waiver can be implied (e.g. unreasonable delay caused by petitioner's action).

No sufficient express waiver has been given, and there has been no showing of delay justifying an implied waiver. Therefore, the condition precedent to the intervention request has not been met, and the motion to intervene is, by its own terms, not before the Board.

The Board notes that the County of LaSalle, et al., are permitted to participate in these proceedings as members of the public pursuant to 35 Ill. Adm. Code 103.203.

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 24th day of January, 1985 by a vote of 5-0.

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