

ILLINOIS POLLUTION CONTROL BOARD
April 15, 1999

DYNACHEM, INC.,)	
)	
Petitioner,)	
)	
v.)	PCB 99-103
)	(Permit Appeal - RCRA)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

ORDER OF THE BOARD (by C.A. Manning):

This docket was opened by the Board's order of February 4, 1999, granting DynaChem, Inc. (DynaChem) a 90-day extension of time in which to file an appeal pursuant to Section 40 of the Environmental Protection Act (Act) (415 ILCS 5/40 (1996)). The final decision for which DynaChem seeks review involves DynaChem's chemical manufacturing facility located on Maple Grove Road, Georgetown, Vermilion County, Illinois. The decision concerns a December 15, 1998 letter which the Illinois Environmental Protection Agency (Agency) characterized as "an approval of a request to modify a RCRA [Resource Conservation and Recovery Act] closure plan." Pet. Ex. A, p.1. By its terms, the February 4, 1999 order required that any appeal be filed with the Board on or before March 15, 1999.

On March 31, 1999, DynaChem filed a petition for review accompanied by a motion for leave to file *instanter*. In that motion, DynaChem recites that on March 15, 1999, it filed a petition for review of two permit decisions, a RCRA permit and a never-issued permit which DynaChem had applied for under the National Pollution Discharge Elimination System (NPDES); this petition did not reference reserved docket PCB 99-103. DynaChem relates that by order of March 18, 1999, the Board docketed the matter as PCB 99-131, struck and dismissed the RCRA permit as untimely filed, but accepted the NPDES appeal for hearing. DynaChem requests that the petition for review of the RCRA permit filed March 15, 1999 in PCB 99-131, as amended by its filing of March 31, 1999 in this docket, be deemed timely filed and accepted for hearing. DynaChem notes that the amended petition asks that the Board strike paragraph 6 of the Agency's December 15, 1998 letter which imposes certain testing conditions. DynaChem states that the relief formerly sought in relation to paragraph 5 of the letter, which recommends that certain of the units remain idle until the Agency certifies their clean closure, is no longer necessary due to Agency action of March 10, 1999. Pet. 1-5.

DynaChem's motion for leave to file *instanter* is hereby granted. While the Board has no jurisdiction to accept late-filed appeals, the time to appeal this RCRA permit was extended by the Board's February 4, 1999 order in PCB 99-103, and DynaChem did timely file an appeal docketed as PCB 99-131. To find that DynaChem's appeal rights are extinguished in the circumstances here would be to elevate form over substance. The Board deems the petition

timely filed and accepts it for hearing. However, for purposes of calculation of the Board's statutory decision deadline (see 415 ILCS 5/40(a)(2) (1996); 35 Ill. Adm. Code 101.105), the Board will consider the petition filed as of March 31, 1999, the date of DynaChem's motion and filing in this docket.

Hearings shall be scheduled and completed in a timely manner pursuant to the applicable statutory decision deadline or as extended by waiver (see 415 ILCS 5/40(a)(2) (1996); 35 Ill. Adm. Code 101.105). Unless otherwise ordered by the hearing officer, the Agency shall file the record of its review of the permit application within 14 days of notice of the petition. See 35 Ill. Adm. Code 105.102.

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 day of 1999 by a vote of .

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board