

ILLINOIS POLLUTION CONTROL BOARD

June 3, 1999

IN THE MATTER OF:)
)
AMENDMENTS TO PERMITTING FOR) R99-18
USED OIL MANAGEMENT AND USED) (Rulemaking - Land)
OIL TRANSPORT: 35 ILL. ADM. CODE)
807 AND 809)

ORDER OF THE BOARD (by N.J. Melas):

On May 13, 1999, the Illinois Environmental Protection Agency (Agency) filed a "Motion to Strike Supplementary Comments of National Oil Recyclers Association and Lenz Oil" (motion). In the motion, the Agency requests that the comments filed by the National Oil Recyclers Association (NORA) on May 7, 1999, be stricken because, although the Agency received NORA's comments, there was no notice, proof of service, or service list attached. The Agency also requests that the comments filed by Lenz Oil (Lenz) on May 7, 1999, be stricken because the Agency never received a copy of the Lenz comments.

Section 102.230 of the Board's rules provides that rulemaking comments should be filed with the Clerk of the Board, the Agency, the Department of Natural Resources, the Attorney General, and the persons on the service list. 35 Ill. Adm. Code 102.230. The hearing officer order in this matter of April 12, 1999, provided that "Persons filing public comments with the Board must simultaneously send a copy of the public comment to persons on the service list." However, at the close of the second hearing, the hearing officer stated, "If you are on the service list, your comments must be simultaneously delivered to all persons on the service list." (emphasis added) Tr.2 at 32.

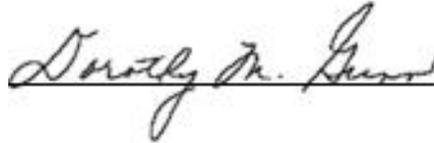
The hearing officer's statement could have confused commenters who are not on the service list regarding the requirement to provide copies of comments to those on the service list. Lenz is not on the service list. In order to correct any injustice arising from the possible confusion, the Board will not strike the May 7, 1999 Lenz comments from the R99-18 docket.

A hearing officer may issue an order directing that commenters must attach notice, proof of service, and a service list. For this proceeding, the hearing officer did not issue such an order, and the Board's rules do not mandate these attachments. Thus, the Board cannot find that the Agency was prejudiced as a result of NORA neglecting to include the attachments

The Board denies the Agency's motion and allows the NORA and Lenz comments filed on May 7, 1999, to remain a part of the R99-18 docket.

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 3rd day of June 1999 by a vote of 7-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", written over a horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board