

ILLINOIS POLLUTION CONTROL BOARD
May 30, 1985

CITY OF AURORA,)
)
 Petitioner,)
)
 v.) PCB 85-51
)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Respondent.)

ORDER OF THE BOARD (by J. Anderson):

The question before the Board at this time is whether hearing is mandatory in this matter because of timely filing of an objection within 21 days of the filing of the variance petition, and if not, whether the Board should employ its discretion to order the scheduling of a hearing. As some confusion has arisen concerning deadlines, it will be helpful to examine the chronology of this case.

The petition was received by the Agency on April 17, and by the Board on April 19. The 21 day period of Section 37(a) of the Act for the filing of objections would expire no earlier than May 10, then. However, presumably due to clerical error, the Agency's newspaper notice established a May 2 deadline for objections to trigger hearing.

An objection was timely filed on May 7, 1985, by Bob and Ann Molsberry. As they withdrew their objection by letter of May 16, the Board did not authorize hearing at its May 16 meeting. Subsequently, on May 16 the Board received an undated objection from Mike McGuinness, received by the Agency on May 15 and forwarded by the Agency to the Board, as well as the Agency's Recommendation. An objection from H. Ellis Boyer was also forwarded and received by the Board May 23. On May 24, the City filed a response to these objections, noting that they were untimely; on May 28, the City filed a response disagreeing in part with the Agency's Recommendation.

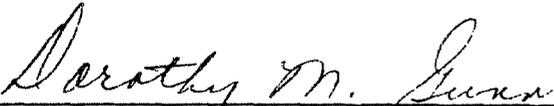
The Board finds that the public interest is best served by ordering hearing in this matter, at which the public can be informed of, and present comments concerning, the basis both of the City's and the Agency's positions. While some objections were late filed, the Board believes both that citizen confusion may have resulted due to the Agency's incorrect newspaper notice, and that citizen reliance may have been placed on the filed-but-withdrawn Molsberry objection and hearing request.

This case is due for decision on July 18 (with July 11 the

last regularly scheduled Board meeting preceding that date). To meet this deadline, the Board orders that hearing be scheduled on or before June 4, 1985, to be held during the week of July 1-5; an earlier date is acceptable only if publication of 21 day newspaper notice of the hearing required by 35 Ill. Adm. Code 103.125 can be accomplished. All submittals including the hearing transcripts which Aurora must provide pursuant to Section 104.122, must be on file at the Board's offices no later than July 11. The Hearing Officer is authorized to grant extensions of these deadlines if, and only if, Aurora extends the Board's decision period by waiver, and all submissions are required to be filed no less than a full week prior to the decision date (three weeks review time is, however, much preferable).

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 30th day of May, 1985 by a vote of 6-0.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board