

ILLINOIS POLLUTION CONTROL BOARD
January 25, 1990

MOTOR OILS REFINING COMPANY, INC.,)
)
 Petitioner,)
)
 v.)
)
ILLINOIS ENVIRONMENTAL PROTECTION)
AGENCY,)
)
 Respondent.)

PCB 89-116
(Permit Appeal)

ORDER OF THE BOARD (by B. Forcade):

On January 4, 1990, Motor Oils filed a motion for summary judgment, to which the Agency responded on January 10. Each filing was supported by affidavit. On January 18, the Agency filed a motion for leave to file its permit record instanter, which motion is hereby granted. For the reasons expressed below, the motion for summary judgment is denied.

The grounds for Motor Oils' motion is the Agency's asserted failure to take action on its permit application within 90 days of the date on which it was filed, as required by Section 39 of the Act. In support thereof, Motor Oils states that its permit application was hand delivered to the Agency on March 15, 1989 and that the Agency acted to deny the permit on June 15, 1989, the 92nd day after March 15.

The Agency does not disagree with these assertions, but states that Motor Oils has failed to mention that the March 15 permit application was rejected by the Agency by certified letter dated March 16 due to Motor Oils' failure to include two copies. The Agency states that the rejected application, its cover letter and the required copies were returned to the Agency on March 20. The Agency states that pursuant to 35 Ill. Adm. Code 807.205(f), the application was accordingly not deemed filed until March 20, and that its June 15 denial was therefore timely made.

The Board finds that entry of summary judgment is not appropriate because of the existence of material issues of fact in this matter. The Board additionally finds that, based on the facts alleged by the Agency, the denial was timely made. Again, Motor Oils' motion is denied.

Finally, the Board notes the Agency's assertion that:

it is surprised at the Petitioner's lack of candor and its failure to tell the whole truth to the Board...The Petitioner's and its consultant's reputations and credibility are not enhanced by these failures to tell the whole truth. It is unfortunate the Board and the Agency must devote its resources to responding to frivolous motions such as this one of Petitioner.

The Board specifically requests a response from Motor Oil on this issue not later than February 2, 1990.

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 25th day of January, 1990, by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board