

ILLINOIS POLLUTION CONTROL BOARD  
June 10, 1987

FORMS CORPORATION OF AMERICA, )  
 )  
 Petitioner, )  
 )  
 v. ) PCB 87-73  
 )  
 ILLINOIS ENVIRONMENTAL )  
 PROTECTION AGENCY, )  
 )  
 Respondent. )

ORDER OF THE BOARD (by B. Forcade):

On May 29, 1987, Forms Corporation of America (hereinafter "Forms") filed a petition for review of denial of permit. This matter is accepted for hearing.

The Board is unable to determine precisely what controversy Forms is bringing to the Board. Form's petition seeks review of an April 22, 1987, Illinois Environmental Protection Agency ("Agency") denial of an air operating permit. In any such proceeding, the Board must determine whether the Agency's decision was correct based on the facts that were available at the time of the Agency's decision. Forms also indicates in its petition that it supplied additional information to the Agency after April 22, 1987, in a new permit application (Pet., par. 8). That application and any future Agency action on the application would not be a part of this proceeding. The Board is also uncertain about whether this petition for review was filed in a timely manner. Therefore, the Board requests briefs from the parties on the following issues:

1. Whether Forms is seeking review of the April 22, 1987, Agency decision or seeking review of a matter presently pending before the Agency; and
2. Whether this petition for review was filed in a timely manner.

Forms' brief must be filed not later than June 26, 1987, the Agency reply not later than July 10, 1987. The Clerk of the Board is directed to provide a copy of Joliet Sand and Gravel Company v. IEPA, PCB 87-55, June 10, 1987, to the parties for additional guidance on the matter.

Hearing must be scheduled within 14 days of the date of this Order and completed within 60 days of the date of this Order.

The hearing officer shall inform the Clerk of the Board of the time and location of the hearing as expeditiously as possible but at least 40 days in advance of hearing so that public notice of hearing may be published. After hearing, the hearing officer shall submit an exhibit list, and all actual exhibits to the Board within 5 days of the hearing. Any briefing schedule shall provide for final filings as expeditiously as possible and in no event later than 70 days from the date of this Order.

If after appropriate consultation with the parties, the parties fail to provide an acceptable hearing date or if after an attempt the hearing officer is unable to consult with the parties, the hearing officer shall unilaterally set a hearing date in conformance with the schedule above. This schedule will only provide the Board a very short time period to deliberate and reach a decision before the due date. The hearing officer and the parties are encouraged to expedite this proceeding as much as possible.

Within 10 days of accepting this case, the Hearing Officer shall enter a Hearing Officer Scheduling Order governing completion of the record. That Order shall set a date certain for each aspect of the case including: briefing schedule, hearing date(s), completion of discovery (if necessary) and pre-hearing conference (if necessary). The Hearing Officer Scheduling Order may be modified by entry of a complete new scheduling order conforming with the time requirements below.

The hearing officer may extend this schedule only on a waiver of the decision deadline by the petitioner and only for the equivalent or fewer number of days that the decision deadline is waived. Such waivers must be provided in writing to the Clerk of the Board. Any waiver must be an "open waiver" or a waiver of decision until a date certain.


Because of requirements regarding the publication of notice of hearing, no scheduled hearing may be canceled unless the petitioner provides an open waiver or a waiver to a date at least 75 days beyond the date of the motion to cancel hearing. This should allow ample time for the Board to republish notice of hearing and receive transcripts from the hearing before the due date. Any order by the hearing officer granting cancellation of hearing shall include a complete new scheduling order with a new hearing date at least 40 days in the future and at least 30 days prior to the new due date and the Clerk of the Board shall be promptly informed of the new schedule.

Because this proceeding is the type for which the Illinois Environmental Protection Act sets a very short statutory deadline for decisionmaking, absent a waiver, the Board will grant extensions or modifications only in unusual circumstances. Any such motion must set forth an alternative schedule for notice,

hearing, and final submissions, as well as the deadline for decision, including response time to such a motion. However, no such motion shall negate the obligation of the hearing officer to establish a scheduling Order pursuant to the fourth paragraph of this Order, and to adhere to that Order until modified.

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 10<sup>th</sup> day of June, 1987, by a vote of 6-0.

  
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Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board