

ILLINOIS POLLUTION CONTROL BOARD
April 12, 1990

IN THE MATTER OF:)
)
PETITION OF SHELL OIL COMPANY)
FOR ADJUSTED STANDARD FROM)
35 ILL. ADM. CODE 302.102,) AS 90-2
302.208, 302.210, AND SUBPART F,) (Adjusted Standard)
PROCEDURES FOR DETERMINING)
WATER QUALITY CRITERIA)
)
Respondent.)

ORDER OF THE BOARD (by R. C. Flemal):

This matter comes before the Board upon a motion to dismiss Petitioner's adjusted standard petition filed March 26, 1990 by the Illinois Environmental Protection Agency ("Agency"). On April 2, 1990, Petitioner filed its reply requesting that the Agency's motion be denied.

On March 5, 1990 Petitioner filed a petition for adjusted standard with the Board for relief from Board regulations governing mixing zones; numeric standards for cyanide, copper and fluoride; and narrative standards and whole effluent toxicity standards, as those rules were amended in the Board in the Toxics Control Regulatory Proceeding, R88-21(A) (January 25, 1990, effective February 13, 1990). In addition, Petitioner also seeks and adjusted standard for Section 302.211 (temperature) and Section 302.212 (ammonia nitrogen).

In its motion, the Agency requests the Board dismiss this petition because the petition fails to comply with the requirements for petition contents in Board procedural rule 106.705. In support of its motion, the Agency discusses several areas in which it believes the petition contains insufficient information.

Petitioner challenges the Agency's contentions, stating that its petition meets the procedural rules' requirements for petition contents, pointing to information contained in the petition. Petitioner submits that even should the Board believe that more information is required, Petitioner requests that the Board issue an order seeking more information rather than dismissal, consistent with Section 106.705.

Upon review of the alleged deficiencies and response by Petitioner, the Board finds that the Agency's concerns mainly involve matters which are best resolved during the course of this proceeding. The Board notes that several other petitions for variance, as well as petitions for adjusted standards, have been

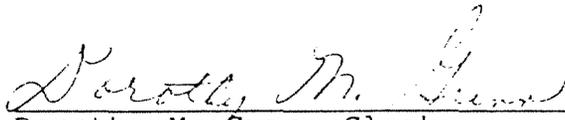
filed seeking relief from the R88-21A water toxics rules. (PCB 90-27, PCB 90-28, PCB 90-29, PCB 90-30, AS 90-3, AS 90-4, AS 90-5.) The Agency has requested dismissal due to asserted informational deficiencies in each case, save for AS90-5) Given the nature of the water toxics amendments and the fact that there is no previously established benchmark for judging the sufficiency of a petition in this arena, the Board is not prepared at this time to dismiss this petition as deficient. However, since Petitioner bears the burden of proof, it is obvious that to the extent additional information is necessary for such proof, such information should be submitted during the course of the proceeding and in advance of hearing.

The Agency's motion to dismiss is accordingly denied.

Lastly, the Board notes that pursuant to procedural rule 106.711, petitioners are required to cause the publication of notice of a petition for adjusted standard within 14 days after filing, and pursuant to 106.712, petitioners must file proof of notice publication within 30 days after filing. No publication proof has been filed for this petition. Given the Agency's motion to dismiss, it may be that Petitioner was awaiting a Board ruling prior to publishing notice. Therefore, on its own motion, the Board extends the time for filing proof of notice publication for 30 days of the date of this Order.

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 12th day of April, 1990, by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board