

ILLINOIS POLLUTION CONTROL BOARD
May 11, 1989

ALLIED-SIGNAL, INC.)
)
 Petitioner,)
)
 v.) PCB 88-172
)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Respondent.)

ORDER OF THE BOARD (by J.D. Dumelle):

This matter comes before the Board upon a May 1, 1989, request by Mr. Mark Donham, representing the Association of Concerned Environmentalists (ACE), to declare the hearing of April 20, 1989, invalid. In support of its request, ACE states that no public notice of the hearing was made and that ACE, an interested party, was not notified of the hearing until April 18, 1989. ACE states that it had previously expressed its concern about notification of hearings and, since it did not receive adequate notice, requests another hearing.

On May 9, 1989, Allied-Signal, Inc. (Allied) filed a response to ACE's request. Allied offers several arguments to support its position that ACE's petition should be denied. However, none of Allied's arguments address the applicability of Section 104.200 of the Board's procedural Rules, 35 Ill. Adm. Code 104.200, to this matter.

The Board believes that Section 104.200 applies and is dispositive of the matter. Section 104.200 states:

Section 104.200 Notice of Hearing

- a) The Hearing Officer, after appropriate consultation with the parties, shall set a time and place for hearing to be held within 60 days of the filing of the petition.
- b) The Hearing Officer shall give notice of the hearing in accordance with Section 103.123(b), at least 21 days before the hearing to the petitioner, the Agency, and anyone who has filed an objection to the petition.

- c) The clerk shall publish the time and place of the hearing in the Board's Environmental Register in the first publication of the Environmental Register after the Hearing Officer shall have set the date for hearing.

Although the provisions of subsection (c) were met as Allied argues, the provisions of subsection (b) clearly were not. There is no question but that ACE is an objector to this variance request; ACE filed its objection on November 14, 1988. Section 103.123(b), cited above, states in pertinent part:

- b) After notice and complaint, all pleadings, motions, and discovery notices and all other notices shall be served personally or by First Class United States mail, and 10 copies of pleadings motions shall be filed with the Clerk with proof of service. Two copies of any discovery motion, disposition, interrogatories, answer to interrogatories, or subpoena shall be filed with the Clerk with proof of service.

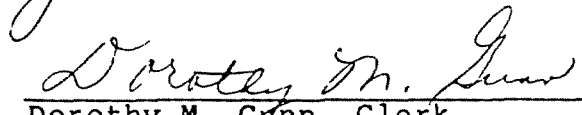
(emphasis added).

There is no evidence that the Hearing Officer provided notice to ACE in accordance with Section 103.123(b), at least 21 days before hearing. Therefore, an additional hearing must be scheduled and proper notice thereof must be given to all objectors. To this extent, ACE's request is granted. However, the Board is not inclined to declare the previous hearing invalid. The Board sees no reason to repeat what has already been accomplished. As transcripts of that hearing will be available, ACE will be afforded ample opportunity to prepare questions of the witnesses that testified at that hearing as well as present testimony and evidence of its own. The Board notes that this will of necessity require the attendance of those who testified at the previous hearing so as to afford the opportunity for cross-examination. The Hearing Officer is therefore directed to secure the attendance of any and all past witnesses.

ACE's motion is, therefore, granted in part and denied in part.

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 17th day of May, 1989 by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board