

ILLINOIS POLLUTION CONTROL BOARD
August 3, 1995

STONE CONTAINER CORPORATION,)	
)	
Petitioner,)	
)	
v.)	PCB 96-4
)	(Permit Appeal-Air
)	Ninety-Day Extension)
)	
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,)	
)	
Respondent.)	

ORDER OF THE BOARD (by C.A. Manning):

On July 10, 1995, Stone Container Corporation (Stone Container) filed a notice of extension of the 35-day appeal period pursuant to Section 40 of the Act, relating to a May 30, 1995 Illinois Environmental Protection Agency (Agency) determination regarding Stone Container supplemental permit application. The Agency on July 18, 1995 filed its agreement to the extension dated July 14, 1995.

P.A. 88-690 (SB1724) effective January 24, 1995, amends Section 40.2(a), which governs the air permit appeal process, to provide:

the 35-day period for petitioning for a hearing may be extended for a period of time not to exceed 90 days by written notice provided to the Board from the applicant and the Agency within the initial appeal period.

Accordingly, any complete notice was due to be filed or postmarked no later than July 5, 1995 (July 4th, the actual 35th day, being a state holiday). (See 35 Adm. Code 101.102(d) and 101.109.) Although Stone Container's Notice was postmarked July 5, 1995, the Agency's agreement was not postmarked until July 14, 1995 and therefore under amended Section 40.2(a), both parties did not file "within the initial appeal period." Because the statutory conditions for the extension have not been met, the Board cannot grant a 90-day extension of the time in which to file a permit appeal pursuant to Section 40.2(a).

The Board can however, accept Stone Container's notice of extension as a petition for review so that Stone Container will not lose its right to file a permit appeal as result of the Agency's late-filed notice of extension. Stone Container's notice, of course, does not satisfy the Board's petition content requirements set forth in Section 105.102; Stone Container could

not have anticipated that its notice would be treated as a permit appeal. In that the Agency's notice was received, albeit late, it is clear the Agency intended that the extension would be granted; therefore, we will allow 90 days from the date the notice was due, or from July 4, 1995, for Stone Container to file an amended petition for review. If the amended petition is not filed on or before October 4, 1995, this matter will be dismissed. The 120 statutory period in which the Board must render a final decision will begin running as of the date of the filing of the amended petition. Additionally, a \$75.00 filing fee will be required at such time as Stone Container files the amended petition.

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 3rd day of August, 1995, by a vote of 5-0.

Dorothy M. Gunn
Dorothy M. Gunn, Clerk
Illinois Pollution Control Board