

ILLINOIS POLLUTION CONTROL BOARD
October 19, 1995

LAND & LAKES #3,)	
)	
Petitioner,)	
)	
v.)	PCB 96-77
)	(Permit Appeal-Land
)	Ninety-Day Extension)
)	
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

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

On October 11, 1995, Land & Lakes filed a notice of extension of the 35-day appeal period pursuant to Section 40 of the Act, relating to a September 7, 1995 Illinois Environmental Protection Agency (Agency) determination regarding Land & Lakes supplemental permit application. The Agency on October 12, 1995 filed its agreement to the extension. The Agency requested the extension "to December 6, 1995, or any other date not more than a total of 90 days from the date of the Agency's final determination".

P.A. 88-690 (SB1724) effective January 24, 1995, amends Section 40(a)(1), which governs the permit appeal process, to provide:

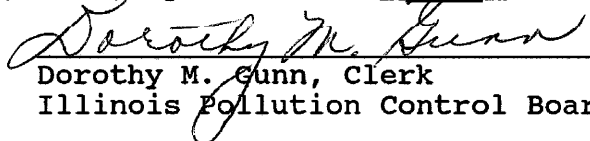
the 35-day period for petitioning for a hearing may be extended for a period of time not to exceed 90 days by written notice provided to the Board from the applicant and the Agency within the initial appeal period.

In the first several orders concerning the 90-day extension, the Board agreed with the parties that the above-quoted language was somewhat ambiguous and acceded to an interpretation that the extension arguably allowed for a total of 125 days (35 days plus a 90-day extension.) (See C & S Recycling, Inc., PCB 95-100 (Orders of March 16, and April 6) However, upon reconsideration and a second review of the legislative intent, the Board now agrees with the Agency's current interpretation that an extension totaling only 90 days is more consistent with the legislative history of P.A. 88-690. (88th G.A., April 21, 1994, Senate Tr. at 227, "...[the bill] provides a procedure for extending the period of time to challenge EPA permit decisions from thirty-five to ninety days." (Remarks of Senator Mahar).) In this case and in the future, the Board will grant extensions allowing for appeal no later than 90 days from the date of the Agency final determination at issue.

As the Board maintains its files by docket number only, the Board will reserve Docket PCB 96-77 for any appeal which may be filed by Land & Lakes. In the event that Land & Lakes fails to file an appeal on or before December 6, 1995 (the 90th day after September 7, 1995), the Board will dismiss the docket as unnecessary. A \$75.00 filing fee will, of course, be required at such time as Land & Lakes files such 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 19th day of October, 1995, by a vote of 7-0.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board