

ILLINOIS POLLUTION CONTROL BOARD  
December 20, 1995

SPILL, MADISON COUNTY	)	
CONSERVATION ALLIANCE, SIERRA	)	
CLUB, NAMEOKI TOWNSHIP CLERK	)	
HELEN HAWKINS, KATHY ANDRIA,	)	
SHIRLEY CRAIN, GLENDA	)	
FULKERSON, JOHN GALL, THELMA	)	
ORR, RON SHAW and PEARL	)	
STOGSDILL,	)	
	)	
Petitioners,	)	
	)	
v.	)	PCB 96-91
	)	(Pollution Control Facility
CITY OF MADISON and METRO-	)	Siting Review)
EAST, LLC,	)	
	)	
Respondents.	)	

ORDER OF THE BOARD (by M. McFawn):

This matter is before the Board on a November 27, 1995 motion to dismiss filed by respondent Metro-East, LLC (Metro-East). Petitioners responded on December 8, 1995, and also filed a motion to strike Metro-East's motion. Metro-East has not filed a response thereto.

In the motion to dismiss, Metro-East asserts that the petition for review in this matter was not timely filed within 35 days of the siting decision, as required by Section 40.1(b) of the Environmental Protection Act (Act), and that the matter should therefore be dismissed. Metro-East asserts that the City of Madison granted approval of the siting application on September 18, 1995. In support of this, Metro-East references the minutes of a September 18, 1995 special meeting of the City Council of the City of Madison. These minutes were adopted by the City on September 26, 1995. (See Exhibit A to Metro-East's motion.)

In their response, petitioners point out that a written decision as required by Section 39.2(e) of the Act was not issued on September 18, 1995. In the amended petition filed November 20, 1995, petitioners included a copy of the City of Madison's Ordinance No. 1271, approving the site location of the pollution control facility proposed by Metro-East. The ordinance is dated September 21, 1995. The petitioners respond that this is the date from which the appeal must be filed.

Section 39.2(e) of the Act provides in relevant part:

Decisions of the county board or governing body shall be in writing, specifying the reasons for the decision . . . .

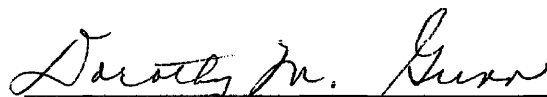
(415 ILCS 5/39.2(e) of the Act.)

The Board therefore looks to the date of the ordinance granting site location suitability approval when determining the timeliness of an appeal to the Board. The ordinance is dated September 21, 1995. The proof of service included with petitioners' original appeal shows that petitioners initially filed their appeal by depositing it in the U.S. mail on October 26, 1995. Pursuant to the Board's procedural rules at 35 Ill. Adm. Code 101.102(d), the appeal was therefore timely filed within 35 days of the City of Madison's siting decision. The motion to dismiss is denied.

Finally, petitioners seek to strike Metro-East's motion on the grounds that it was not timely filed and was not filed on recycled paper as required by Section 101.103 of the Board's procedural rules (35 Ill. Adm. Code 101.103). While petitioners' arguments are unopposed and appear procedurally correct, the Board instead has ruled upon Metro-East's motion to dismiss in petitioners' favor so that there is no question as to whether this petition was timely filed.

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 20th day of December, 1995, by a vote of 7-0.

  
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Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board