

ILLINOIS POLLUTION CONTROL BOARD
February 4, 1993

IN THE MATTER OF:)
)
AMENDMENTS TO THE NEW) R92-21
SOURCE REVIEW RULES) (Rulemaking)
35 ILL. ADM. CODE 203)

ORDER OF THE BOARD (by G. T. Girard):

On January 27, 1993, the Board received a document entitled "Comments of Chicago Lung Association and the Illinois Chapter of the Sierra Club". The document was filed by Mr. Ron Burke on behalf of Chicago Lung Association and the Illinois Chapter of the Sierra Club. The filing states: "If a waiver from the Board is necessary, Chicago Lung Association and the Illinois Chapter of the Sierra Club request one." The Board will consider this filing a motion to waive for good cause the written submission of testimony 10 days before hearing pursuant to Section 28.5(g) of the Act. Further, the Board will rule on this matter today as the second hearing is scheduled for tomorrow and to avoid undue delay.

Prefiled testimony was due on January 26, 1993, ten days prior to the hearing date of February 5, 1993, pursuant to Section 28.5(g). The filing states that the Board's first notice opinion sets the date for the second hearing as February 6, 1993. Mr. Burke further states that he had marked the date for pre-filing as January 27 on his calendar based on the February 6 date.

The Board's first notice opinion and order of November 19, 1992 did not set hearing dates. The Board notes that the first notice opinion and order only listed the schedule of dates by which the Board is required to act under Section 28.5. The date listed in the opinion as the last available date (under Section 28.5 timelines) for the holding of the first hearing was January 7, 1993, and the hearing was actually held on January 6, 1993. Similarly, February 6, 1993 was listed as the last available date for holding the second hearing, and the second hearing is scheduled for February 5, 1993.

The Board's longstanding practice is not to set hearing dates in Board orders, but rather to leave the setting of hearing dates to the hearing officer to be included in a later hearing officer order. A hearing officer order clearly stating the February 5, 1993 hearing date was entered and mailed to interested persons in this matter. Lastly, the transcript of the first hearing indicates that Mr. Burke, representative of Chicago Lung Association, knew the hearing date for the second hearing is February 5, 1993. (Tr. at 128).

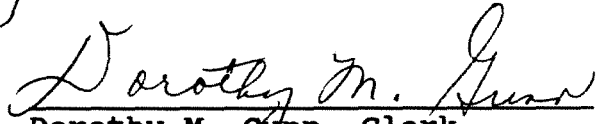
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Although the Board can see how a misreading of the language in one of its opinions can happen, such misunderstanding does not rise to the level of "good cause". The Board denies the motion to waive the written submission of testimony pursuant to Section 28.5 of the Act as good cause was not shown for such waiver. The Board notes that, pursuant to the Board's October 29, 1992 resolution, Mr. Burke will be allowed to testify but only if time remains in the hearing day.

IT IS SO ORDERED.

Board Member Forcade dissents.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, do hereby certify that the above order was adopted on the 4th day of February, 1993, by a vote of 5-1.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board