

ILLINOIS POLLUTION CONTROL BOARD  
June 22, 1995

C & S RECYCLING, INC., )  
 )  
 Petitioner, )  
 )  
 v. ) PCB 95-100  
 ) (Permit Appeal-Land)  
 ILLINOIS ENVIRONMENTAL )  
 PROTECTION AGENCY, )  
 )  
 Respondent. )

ORDER OF THE BOARD (R.C. Flemal):

By order of April 6, 1995 the Board granted C & S Recycling, Inc. (C&S) an extension of time through June 15, 1995 in which to file an appeal of a February 10, 1995 Illinois Environmental Protection Agency (Agency) permit determination.

On June 9, 1995 C&S filed a document which it has designated in the caption as an "Appeal from denial of permit for a transfer station", but which it has titled "Petition for a Hearing and/or Variance". While the petition details the history of the Agency's February 10, 1995 denial of a application for a permit for a municipal waste transfer station, the only relief requested is contained in paragraph seven (7) of the petition, which reads:

"Petitioner, therefore, seeks a hearing and/or variance as Section 22.14 as amended imposes an arbitrary and unreasonable hardship upon Petitioner and a variance is necessary in order for the facility to continue its operations and to employ greater recycling and efficient waste transfer in the City of Chicago."

On June 15, 1995 the Agency filed a Motion to Dismiss Portions of Petitioner's Petition for a Hearing and/or Variance. The Agency interprets the June 9th C&S filing as requesting both a permit appeal and a petition for variance. The Agency argues, among other things, that the petition is insufficient with regards to the required contents of a variance petition as set forth in the Board's procedural rules at 35 Ill. Adm. Code 104.121 and those portions should be dismissed.

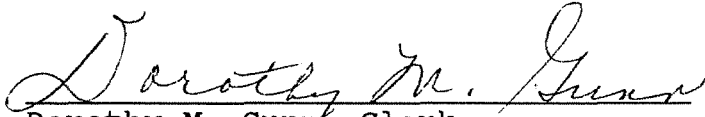
The Board cannot grant a variance from a statutory requirement in a permit appeal pursuant to Section 40 of the Act (415 ILCS 5/40) and 35 Ill. Adm. Code 105. Variance relief pursuant to Section 35 of the Act (415 ILCS 5/35) and 35 Ill. Adm. Code 104 can be granted only for five (5) years, at which time the facility must be in compliance with the Act and regulations.

Petitioner is directed to file, within forty-five (45) days of the date of this order, an amended petition which clarifies whether this action is a permit appeal proceeding or a petition for variance, and which satisfies the informational requirements of 35 Ill. Adm. Code 105 if the action is a permit appeal or of 35 Ill. Adm. Code 104 if the action is a variance request. In the meantime, the Board will continue to treat this matter as a Section 40 permit appeal. The Board's one-hundred-twenty (120) day time clock pursuant to Section 40 will restart upon the filing of an amended petition. If the petitioner intends this action to be a Section 35 variance, the 120-day decision time clock will start upon the filing of a sufficient variance petition.

Given the Board's actions today as to the instant petition, the Agency's motion to dismiss portion of petitioner's petition for a hearing and/or variance is denied.

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 22<sup>nd</sup> day of June, 1995, by a vote of 6-0.

  
Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board