

ILLINOIS POLLUTION CONTROL BOARD
February 25, 1993

ALICE ZEMAN, et al.,)
)
Petitioner,)
)
v.) PCB 92-174
) (Local Siting Approval Appeal)
VILLAGE OF SUMMIT and WEST) (Consolidated with PCB 92-177)
SUBURBAN, RECYCLING and)
ENERGY CENTER, INC.,)
)
Respondent.)

DONNA QUILTY,)
)
Petitioner,)
)
v.) PCB 92-177
) (Local Siting Approval Appeal)
VILLAGE OF SUMMIT and WEST) (Consolidated with PCB 92-174)
SUBURBAN, RECYCLING and)
ENERGY CENTER, INC.,)
)
Respondent.)

CONCURRING OPINION (by G. T. Girard):

I concur with the Board opinion and order of February 25, 1993, in PCB 92-174. However, I believe that the statutory decision timetable for this matter on remand should be 270 days, since this is being remanded as an amended application.

The statutory framework for decision deadline by the county board or local governing body is given in Section 39.2(e) of the Illinois Environmental Protection Act (Act) [415 ILCS 5/40.1 (1992)). In the first paragraph of subsection 39.2(e) of the Act it states that: "If there is no final action by the county board or governing body of the municipality within 180 days after the filing of the request for site approval the applicant may deem the request approved." This was the basis of the statement in Point 1 of the February 25, 1993, Board opinion and order that: "In lieu of a new filing by the applicant, the statutory 180 day timetable as provided in Section 39.2 of the Environmental Protection Act will begin as of the date of this order."

However, in Point 2 (p. 26) of the February 25, 1993, Board opinion and order, it is clear that the Board is remanding the application for reconsideration as an amended application. The

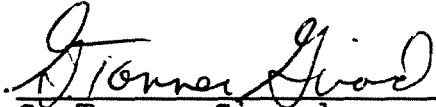
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second paragraph in subsection 39.2(e) of the Act clearly states that for an amended application: "the time limitation for final action set forth in this subsection (e) shall be extended for an additional period of 90 days." Therefore, if an amended application is being remanded and the time-clock restarted from the beginning, the decision deadline should be 180 days plus the 90 day addition for an amended application, for a total of 270 days.

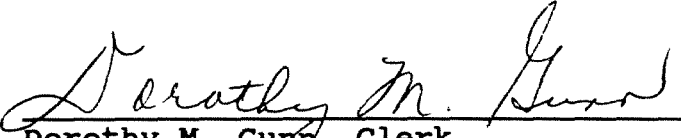
Whether not the application is treated as a new or an amended application is not a small point. Subsection 39.2(e) is very clear that an applicant can only submit one amended application. If this application is being remanded as an amended application, then the applicant cannot file another amended application. If the applicant desired to amend the application, the applicant would be required by statute to file a new application. A new application would necessitate following the notice requirements of Section 39.2 of the Act to invest the local governing body with jurisdiction to hear the application.

For the reasons delineated above, the Board needs to clearly distinguish whether an application is "new" or "amended". It is clearly stated in subsection 39.2(e) that an amended application has the 180 day decision deadline extended by 90 days. Therefore, in PCB 92-174, the decision deadline for the remanded amended application should be 270 days.

Therefore, I respectfully concur.


 G. Tanner Girard
 Board Member

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above concurring opinion was submitted on the 3rd day of March, 1993.


 Dorothy M. Gunn, Clerk
 Illinois Pollution Control Board