

ILLINOIS POLLUTION CONTROL BOARD  
July 1, 1993

MINNESOTA MINING AND	)	
MANUFACTURING COMPANY,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 91-162
	)	(Variance)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Respondent.	)	

ORDER OF THE BOARD (by B. Forcade):

On June 18, 1993, Minnesota Mining and Manufacturing Company (3M) and the Illinois Environmental Protection Agency (Agency) filed a joint status report. The parties report that 3M currently has a FIP Revision Petition pending before the United States Environmental Protection Agency (USEPA). 3M and the Agency state that the matter before the Board should not proceed to hearing until the USEPA reaches a determination on the FIP Revision Petition or alternative capture efficiency protocols. The parties request that additional status reports be filed by September 1, 1993.

The status report was filed in response to a Board order issued on April 22, 1993. This order noted that no substantive action has taken place in this matter since the filing of the petition almost two years ago. The Board also noted the continual filing of short term limited waivers in this matter and how the use of limited waivers taxes the resources of the Board. The order also discussed relevant time constraints involved in matters with decision deadlines. The Board specifically noted that a date for hearing must be set at least 120 days prior to the decision deadline to allow sufficient time to notice the hearing and for the Board to meet the decision deadline.

The Board notes that the current decision deadline is December 1, 1993. Despite the Board's admonition that adequate case management requires scheduling a hearing at least 120 days before the decision deadline (about August 3, 1993), the parties have requested to file a status report only 90 days prior to the decision deadline (September 1, 1993). This is unacceptable.

Given the present decision deadline of December 1, 1993, a hearing date must be set at the beginning of August, 1993 to allow time for notice of the hearing, the filing of briefs, and Board deliberation. The parties have requested to file status reports at a time when the hearings should be held in this matter.

The Board is aware of the parties desire to postpone hearing before the Board until after a determination is reached by the USEPA. If this desire were accompanied by an open waiver, the scheduling problems would disappear. However, the repeated short term extensions of the decision deadline forces the Board to track the status of the case on an all too frequent basis in order to ensure that it proceeds in accordance with the schedules necessary to reach a decision by the statutory deadline. As the Board stated in its prior order in this matter:

This a deadline case where 6 limited waivers have been submitted and 1 hearing has been cancelled. The continual filing of limited waivers and the cancellation of hearings taxes the administrative resources of the Board. Further, the cancellation of a hearing that has already been noticed in newspapers of general circulation wastes the Board's resources and misinforms the public.

To allow adequate time for the filing of briefs and Board deliberation before the deadline, the Board requires that hearings be scheduled approximately 120 days prior to the decision deadline. It is the responsibility of the petitioner to provide adequate waivers and proceed with the matter in a timely fashion, yet not to cancel hearings after notice has been published without substantial justification.

Failure to provide the Board with an adequate waiver or cancellation of noticed hearings may subject this matter to dismissal for want of prosecution. (Emphasis added)

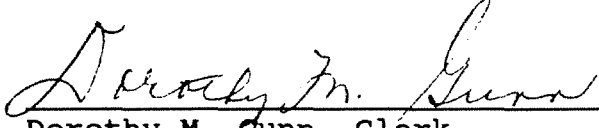
The Board emphasizes that 35 Ill. Adm. Code 101.105 allows for the filing of open waivers. The Board maintains that in cases, such as the one before the Board, where a schedule for the completion of the case cannot be determined, an open waiver is preferable to short term limited waivers. When an open waiver is filed the Board typically requires the filing of periodic status reports to keep the Board informed of any progress in the case. The Board further notes that once the record has been completed, the parties can petition the Board for an expedited decision.

As noted in the Board's prior opinion, failure to provide an adequate waiver may subject this matter to dismissal for want of prosecution.

The Board will order the parties to file an additional status report to be received at the Board offices not later than 4:30 on Monday, August 2, 1993. If an "open waiver" is not filed prior to the receipt of the status report, the Board may take one of the following actions at the regularly scheduled August 5, 1993 Board meeting: dismissal of the petition for want of prosecution or setting the matter for hearing in accordance with the present decision deadline despite objections from the parties.

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 1<sup>st</sup> day of July, 1993, by a vote of 7-0.

  
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Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board