

ILLINOIS POLLUTION CONTROL BOARD
January 7, 1993

LONE STAR INDUSTRIES, INC.,)
)
Petitioner,)
)
v.) PCB 92-134
) (Variance)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

ORDER OF THE BOARD (by B. Forcade):

On November 9, 1992, the Illinois Environmental Protection Agency ("Agency") filed its recommendation in this matter. The recommendation included a copy of the October 20 letter from the objector in this proceeding; the letter raised concerns regarding leachate and monitoring at the site and requested notification of the hearing. On November 12, 1992, hearing was held. At least one member of the public attended. (Tr. 6). On December 30, 1992, Lone Star Industries, Inc., filed a "Response to Recommendation of the Illinois Environmental Protection Agency and Motion for Modification of Petition for Variance."¹ This document proposes language to replace the requirements in the Agency recommendation regarding dewatering of the CKD pond. At hearing Lone Star indicated it might propose alternatives to dewatering (e.g., Tr. 183-4), but no specifics were provided. The Board notes that the objector was not served with the December 30, 1992 filing by Lone Star.

The Board finds the response filed by Lone Star is not timely, and the Board will not consider it. The Board regulations regarding responses to recommendations are found at 35 Ill. Adm. Code 104.181:

Response or Amended Petition

Within 7 days after receipt of the Agency Recommendation, the petitioner may:

- a) File with the Board a response to any Agency recommendation and a copy shall be served upon the Agency; or,
- b) File an amended petition for variance in accordance with Section 104.121, requesting that the matter

¹ On January 5, 1993, Lone Star filed a motion to correct a typographical error in its response. This motion is granted.

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be set for hearing. The Board shall authorize the matter for hearing and render a final decision within 90 days after the filing of the amended petition.

One objective of requiring a response within seven days is to ensure areas of disagreement can be addressed at hearing with specificity. Another objective is to ensure those attending the hearing will have the benefit of knowledge of the parties changed positions.

One obvious difficulty in this proceeding was the Agency's delayed filing of its recommendation, barely three days prior to hearing. The Agency's late filing substantially frustrated both of the above stated objectives.

The Board will require Lone Star to file an Amended Petition in compliance with Section 104.121 if it wishes to pursue alternatives to dewatering. Such Amended Petition must be served upon the objector. The Board will not at this time require another hearing to be scheduled, however the Agency or the objector may request an additional hearing within 15 days of being served with the Amended Petition. This Amended Petition will restart the time clock for the Board's decision deadline consistent with Section 104.181(b).

The Board notes that many of the phrases used in the four conditions articulated by Lone Star lack specificity. For example: "the effectiveness of the leachate system will be demonstrated", "substantially empty", "employ supplemental methods", "if necessary", "proves unworkable", and "manageable level". Absent greater specificity, the Board would find it difficult to interpret the language employed by Lone Star.

This matter is presently due for decision on March 25, 1993. Unless an Amended Petition is filed by February 1, 1993, the Board will render a decision based upon the record absent the December 30, 1992 filing. The briefing schedule contained in the Hearing Officer's December 11, 1992 Order is specifically not stayed. However, Lone Star's filing of an Amended Petition in accordance with this Order will stay the briefing schedule pending further order of the Board.

IT IS SO ORDERED.

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I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 7th day of January, 1993, by a vote of 5-0.

Dorothy M. Gunn

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board

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