

ILLINOIS POLLUTION CONTROL BOARD
November 4, 1993

MOBIL OIL CORPORATION,)	
)	
Petitioner,)	
)	
v.)	PCB 93-151
)	(Variance)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

ORDER OF THE BOARD (by J. Theodore Meyer):

This matter is before the Board on two filings. On October 27, 1993, respondent the Illinois Environmental Protection Agency (Agency) filed a motion for leave to file its recommendation instanter. The Agency notes that its recommendation was due on September 18, 1993, but states that because of a death in the assigned attorney's family, and subsequent negotiations with petitioner Mobil Oil Company, the recommendation is filed 34 days late. The motion to file the Agency recommendation instanter is granted.

On November 2, 1993, Mobil filed two documents: a "response" to the Agency recommendation, and a request for hearing. As to the request for hearing, Mobil notes that in its original petition, it waived its right to a hearing unless an objection was filed. Mobil states that it requests a hearing, and asks that "the hearing be scheduled immediately so that the Board can meet its statutory timeframe for variance decisions." (Request at 2.)

Section 104.181 of the Board's procedural rules (35 Ill. Adm. Code 104.181) provides for a petitioner to take one of two actions within 7 days of the receipt of the Agency recommendation: 1) file a response to that recommendation; or 2) file an amended petition, requesting that the matter be set for hearing. The rule does not provide for a petitioner to file both a response and a request for hearing. This limitation is necessary so that the Board can meet the statutory decision deadline while also complying with the notice requirements for hearing. Because Mobil requests a hearing, we construe its response as an amended petition pursuant to Section 104.181(b). The filing of an amended petition restarts the timeclock for decision, so that decision in this case is now due 120 days from November 2, 1993 (the date of filing of Mobil's amended

petition).¹ The Board hereby authorizes hearing.

The Board notes that Mobil is currently operating under a site-specific rule which expires on December 31, 1993. (35 Ill. Adm. Code 304.214.) Because of this circumstance, if Mobil wishes to withdraw its request for hearing, the Board will make its decision in accordance with the original decision deadline. Any withdrawal of the request for hearing must be filed no later than November 15, 1993.

Hearing must be scheduled within 14 days of the date of this order and completed within 60 days of the date of this order. The hearing officer shall inform the Clerk of the Board of the time and location of the hearing at least 40 days in advance of hearing so that public notice of hearing may be published. After hearing, the hearing officer shall submit an exhibit list and all actual exhibits to the Board within 5 days of the hearing. Any briefing schedule shall provide for final filings as expeditiously as possible and in no event later than 70 days from the date of this order.

If after appropriate consultation with the parties, the parties fail to provide an acceptable hearing date or if after an attempt the hearing officer is unable to consult with the parties, the hearing officer shall unilaterally set a hearing date in conformance with the schedule above. This schedule will only provide the Board a very short time period to deliberate and reach a decision before the due date. The hearing officer and the parties are encouraged to expedite this proceeding as much as possible.

Within 10 days of accepting this case, the hearing officer shall enter a hearing officer scheduling order governing completion of the record. That order shall set a date certain for each aspect of the case including: briefing schedule, hearing date(s), completion of discovery (if necessary) and pre-hearing conference (if necessary). The hearing officer scheduling order may be modified by entry of a complete new scheduling order conforming with the time requirements below.

The hearing officer may extend this schedule only on a

¹ We note that Section 104.181(b) states that decision is due 90 days after filing. However, our procedural rule has not been updated since the statutory change to Section 38(a) of the Environmental Protection Act (Act) (415 ILCS 5/38(a) (1992)) extended our time for decisions in variances from 90 to 120 days. The Board will make every effort to decide this case as soon as possible after the conclusion of hearing and any briefing schedule.

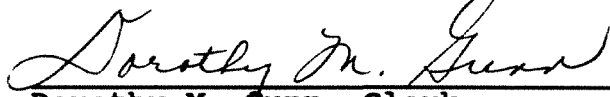
waiver of the decision deadline by the petitioner and only for the equivalent or fewer number of days that the decision deadline is waived. Such waivers must be provided in writing to the Clerk of the Board. Any waiver must be an "open waiver" or a waiver of decision until a date certain.

Because of requirements regarding the publication of notice of hearing, no scheduled hearing may be cancelled unless the petitioner provides an open waiver or a waiver to a date at least 120 days beyond the date of the motion to cancel hearing. This should allow ample time for the Board to republish notice of hearing and receive transcripts from the hearing before the due date. Any order by the hearing officer granting cancellation of hearing shall include a complete new scheduling order with a new hearing date at least 40 days in the future and at least 30 days prior to the new due date and the Clerk of the Board shall be promptly informed of the new schedule.

Because this proceeding is the type for which the Environmental Protection Act sets a very short statutory deadline for making a decision, absent a waiver, the Board will grant extensions or modifications only in unusual circumstances. Any such motion must set forth an alternative schedule for notice, hearing, and final submissions, as well as the deadline for decision, including response time to such a motion. However, no such motion shall negate the obligation of the hearing officer to establish a scheduling order pursuant to the requirements of this order, and to adhere to that order until modified.

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 4th day of November, 1993, by a vote of 6-0.


 Dorothy M. Gunn, Clerk
 Illinois Pollution Control Board