

ILLINOIS POLLUTION CONTROL BOARD  
July 25, 1991

INDIAN REFINING LIMITED )  
PARTNERSHIP, )  
 )  
Petitioner, )  
 )  
v. ) PCB 91-110  
 ) (Permit Appeal)  
ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
 )  
Respondent. )

ORDER OF THE BOARD (by M. Nardulli):

This matter is before the Board on a "Joint Motion for Extension of Time to File Record and Decision Deadline" filed July 12, 1991 and a "Joint Statement of Timeliness of Filing" filed on July 17, 1991 by the Illinois Environmental Protection Agency (Agency) and Indian Refining Limited Partnership (Indian). This statement of timeliness is filed in response to the Board's order of July 11, 1991 questioning the timeliness of Indians' petition for review in this permit appeal.

The parties' joint statement includes the affidavit of an Agency employee responsible for mailing letters concerning Agency air pollution permits and a copy of the certified mail receipt.<sup>1</sup> These documents establish that the Agency mailed the challenged permit decision on May 20, 1991. Petitioner has 35 days from the date of mailing to file its petition with the Board. (Ill. Rev. Stat. 1989, ch. 11 1/2, par. 1040(a)(1); 35 Ill. Adm. Code 105.102(a)(2).) 35 days from May 20, 1991, in accordance with 35 Ill. Adm. Code 101.109, is June 24, 1991.

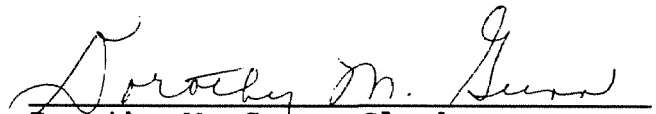
The Board's general procedural rules provide that "[f]iling, inspection, and copying of documents may be done in the Clerk's office from 8:30 a.m. to 4:30 p.m. Monday through Friday" and that filings received after 4:30 p.m. will be date-stamped the following business day. (35 Ill. Adm. Code 101.102(a) and (b).) Indian's petition was date-stamped by the Clerk on June 25, 1991 because it was personally delivered to the Board after 4:30 p.m. on June 24,

<sup>1</sup> The Board has previously noted the problems surrounding the agency's failure to attach proof of service with permit decisions in order to preserve mailing dates. (Finks & Austman v. IEPA, PCB 90-243 (February 7, 1991); Pierce & Stevens Corp. v. IEPA, PCB 91-100 (July 11, 1991).) While the Agency did not utilize a proof of service here, the Agency did adhere to the practice of sending its permit decisions by certified mail so as to establish the date of mailing.

1991. Indian attempts to bring its filing within the purview of 35 Ill. Adm. Code 101.102(d) which provides that if a filing is received after any due-date, "the time of mailing shall be deemed the time of filing." The Board adopted this "mailed is filed" provision because it places persons not located in the Chicago area who do not have the option of messenger service or personal delivery to file documents at the Clerk's Chicago office on equal footing with persons that have such access. (In the Matter of: Procedural Rules Revision 35 Ill. Adm. Code 101, 106 (Subpart G) and 107, R88-5(A) at 5 (June 8, 1989).) However, Indian did not mail its petition, it filed the petition by personal delivery. Therefore, the "mailed is filed" provision and rationale do not apply here. Indian's petition was filed on June 25, 1991 and was, therefore, untimely filed. Consequently, the petition is dismissed for lack of jurisdiction. Indian is of course free to refile its permit application with the Agency. The Board's ruling today renders moot the parties' motion for an extension of time to file the Agency record.

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 25<sup>th</sup> day of July, 1991 by a vote of 5-0.

  
Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board