

ILLINOIS POLLUTION CONTROL BOARD
June 27, 1991

PIERCE & STEVENS, CORP.,)
)
 Petitioner,)
)
v.)
)
)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
)
 Respondent.)

PCB 91-100
(Permit Appeal)

ORDER OF THE BOARD by (M. Nardulli):

This matter comes before the Board on petitioner Pierce & Stevens Corporation's filing of a petition for review challenging the Illinois Environmental Protection Agency's (Agency) imposition of permit conditions.

Section 40(a)(1) of the Environmental Protection Act (Act) provides that an applicant may seek review of the Agency's permit decision by filing a petition for hearing with the Board within 35 days. (Ill. Rev. Stat. 1989, ch. 111 1/2, par. 1040(a)(1).) Section 105.102(a)(2) of the Board's procedural rules governing permit appeals provides that such a petition for hearing shall be filed with the Board "within 35 days of the date of mailing of the Agency's final decision." (35 Ill. Adm. Code 105.102(a)(2).)

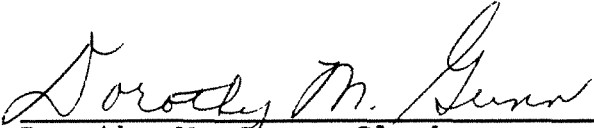
Here, the Agency's permit from which appeal is sought is dated May 10, 1991-- 35 days from May 10, 1991 is June 14, 1991.¹ Petitioner's petition for hearing was date-stamped by the Clerk on June 18, 1991. Because the petition for hearing is date-stamped after the due date, "the time of mailing shall be deemed the time of filing." (35 Ill. Adm. Code 101.102(d).) Hence, the Board must look to petitioner's certificate of service to determine the time of filing. (35 Ill. Adm. Code 101.143(a)(1).) Petitioner's certificate of service states that the petition for hearing was served on the Board by personal delivery on June 18, 1991, four days after June 14, 1991.

¹ Section 101.109 of the Board's general procedural rules provides that "[c]omputation of any period of time prescribed by this Chapter or the Act shall begin with the first calendar day following the day on which the act, event, or development occurs and shall run until the end of the last day, or next business day if the last day is a Saturday, Sunday, or national or state legal holiday." (35 Ill. Adm. Code 101.109.)

Based upon the above, it appears that petitioner's petition for hearing is untimely filed. Therefore, the Board hereby rescinds its set for hearing order adopted at the June 20, 1991 board meeting. The Board directs the parties to address the issue of timeliness of the filing of the instant petition by filing simultaneous responses to this order to be received by the Board no later than 4:30 p.m. on July 8, 1991. In particular, the Board directs the parties' attention to the Board's decision in Finks & Austman v. IEPA, PCB 90-243 (February 7, 1991).

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 21st day of June, 1991 by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board