ILLINOIS POLLUTION CONTROL BOARD February 28, 1991

BURLINGTON NORTHERN RAILROAD CO.,)
Petitioner,)
v.) PCB 91-11) (Permit Appeal)
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,)
Respondent.)

ORDER OF THE BOARD (by J. Anderson):

Burlington Northern filed this appeal on January 18, 1991, to contest portions of a revised closure plan for a hazardous waste storage area, a rail siding at the Koppers Industries facility in Galesburg. The petition recited that it was filed pursuant to 35 Ill. Adm. Code 725.218(h) and 105.103.

On February 7, 1991, the Agency filed a motion to dismiss the petition asserting that 1) Section 105.103 governs only 3rd party appeals of hazardous disposal sites, 2) Section 105.102(a) governs this appeal; and 3) the petition fails to satisfy the informational requirements of Section 105.102(a). In its February 14 reply, Burlington Northern asserts that it filed its petition pursuant to Section 105.103 based on directions it had received from the Agency and requests leave to amend the petition.

The Agency's motion to dismiss is denied. While the Agency is correct that Section 105.102(a) governs this appeal and that the petition is deficient pursuant to that rule, it is the Board's practice to allow the petitioner to cure the deficiency in situations such as this. While the Board will consider the petition timely filed, the Board construes the timeclock for Agency and Board actions pursuant to Section 40 of the Act and Part 105 of the Board's procedural rules as starting only upon the filing of a complete petition. The Board notes that an open waiver of the decision deadline in this case was filed February 14, 1991.

If an amended petition curing the noted deficiency is not filed within 45 days of the date of this Order, this petition will be subject to dismissal.

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 25th day of _________, 1991, by a vote of ________.

Dorothy M Gunn, Clerk Illinois Pollution Control Board