

ILLINOIS POLLUTION CONTROL BOARD

September 1, 2005

ESG WATTS, INC.,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 06-06
	)	(Permit Appeal - Land)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Respondent.	)	

ORDER OF THE BOARD (by G.T. Girard):

On July 7, 2005, the Board received a petition for review (Pet.) filed by ESG Watts, Inc. (petitioner)<sup>1</sup>. The petition indicated that petitioner is seeking review of a decision by the Illinois Environmental Protection Agency (Agency) dated May 26, 2005. The Agency issued a supplemental permit but denied approval of aspects of petitioner's closure plan for the facility known as Taylor Ridge located in Rock Island County. Pet. at 1.

On July 21, 2005, the Board found that "the petition lacks specificity concerning the date of service of the final decision and the grounds of appeal." The Board directed the petitioner to file an amended petition within 30 days of the July 21, 2005, specifying when the final decision was served on petitioner and specifying the grounds for appeal.

On August 29, 2005, petitioner filed an amended petition accompanied by a motion to file *instante*. Petitioner states that to establish the date of service of the Agency's decision, the petitioner requested the return receipt from the Agency. The petitioner received that on August 18, 2005. Petitioner indicates that the delay in filing the amended petition was due to the petitioner's efforts to ascertain the exact date of service. Petitioner further states that the motion is not made for the purpose of delay and is submitted in the interest of justice." The Board grants the motion to file *instante*.

In the amended petition, the petitioner provides proof that the Agency's decision denying approval of petitioner's proposed groundwater monitoring plan was served on petitioner on May 31, 2005. Thus, the initial filing of a petition for review on July 7, 2005, was timely. Further, petitioner provides specificity as to the reasons for appealing the Agency's decision. The Board therefore finds that the amended petition is sufficient and accepts the amended petition. This will also restart the time by which the Board must decide this appeal.

Petitioner has the burden of proof. 415 ILCS 5/40(a)(1) (2005); *see also* 35 Ill. Adm. Code 105.112(a). Hearings "will be based exclusively on the record before the Agency at the

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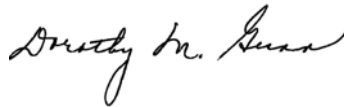
<sup>1</sup> The Board received the filing fee of \$75 on July 12, 2005.

time the permit or decision was issued.” 35 Ill. Adm. Code 105.214(a). Hearings will be scheduled and completed in a timely manner, consistent with the decision deadline (*see* 415 ILCS 5/40(a)(2) (2004)), which only petitioner may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, petitioner “may deem the permit issued.” 415 ILCS 5/40(a)(2) (2004). Currently, the decision deadline is December 27, 2005 (the 120th day after August 29, 2005, the date the amended petition was filed). *See* 35 Ill. Adm. Code 105.114. The Board meeting immediately before the decision deadline is scheduled for December 15, 2005.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by September 28, 2005 which is 30 days after petitioner filed the amended petition. 35 Ill. Adm. Code 105.212(a). If the Agency wishes to seek additional time to file the record, it must file a request for extension before the date on which the record is due to be filed. 35 Ill. Adm. Code 105.116. The record must comply with the content requirements of 35 Ill. Adm. Code 105.212(b).

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on September 1, 2005, by a vote of 5-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn".

Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board