

ILLINOIS POLLUTION CONTROL BOARD  
September 19, 1996

IN THE MATTER OF: )  
)  
PETITION OF CHEMETCO, INC., FOR AN )  
ADJUSTED STANDARD UNDER 35 ILL. ) AS 97-2  
ADMIN. CODE 720.131 (a) & (c) ) (Adjusted Standard - RCRA)

ORDER OF THE BOARD (by E. Dunham):

On August 9, 1996 Chemetco, Inc. filed a petition for adjusted standard under 35 Ill. Adm. Code 720.131 (a) and (c). Along with the petition Chemetco filed a motion to incorporate the record from AS 96-11.<sup>1</sup> Chemetco asserts that the petition in AS 96-11 is identical to the petition in this matter. Chemetco believes that it will expedite the resolution of this matter if the Board considers the documents already filed in AS 96-11. Chemetco believes that the parties will file the same responses to the new petition as filed in AS 96-11.

On August 15, 1996, the Illinois Environmental Protection Agency (Agency) filed an objection to the motion to incorporate. The Agency asserts that it intends to file a response to the new petition and that incorporation of AS 96-11 may result in confusion. The Agency also objected to Chemetco's waiver of hearing in its petition. The Agency asserts that the Board is required to hold a hearing for a RCRA adjusted standard and that the petitioner cannot waive the required hearing.

Chemetco filed a response to the Agency's objection to the motion to incorporate on August 19, 1996. Chemetco states that the statement waiving the hearing was included pursuant to the requirements of 35 Ill. Adm. Code 106.705(j) and is not applicable to the hearing required by 35 Ill. Adm. Code 106.415. On August 23, 1996 Chemetco filed a request for leave to file additional support for the motion to incorporate. The Board hereby grants the motion for leave and accepts the additional information. Chemetco states that it has no objection to the Agency filing a response to the petition. Chemetco further declares that it is not seeking to waive the hearing required by 35 Ill. Adm. Code 106.415 for a RCRA adjusted standard but that the statement on waiver of hearing was required as part of the petition.

On August 23, 1996 the Agency filed a motion for leave to file a reply to Chemetco's response along with the reply. The moving party shall not have the right to reply, except as permitted by the Board or hearing officer. (35 Ill. Adm. Code 101.241(c).) The Board grants the motion for leave to reply and accepts the reply from the Agency.

The Board denies the motion to incorporate the record from AS 96-11. The record in AS 96-11 contains the adjusted standard petition (which is identical to the petition filed in this

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<sup>1</sup>AS 96-11 was dismissed by Board order on August 1, 1996 because Chemetco failed to timely file a certificate of publication as required by 35 Ill. Adm. Code 106.712.

docket (AS 97-2)) and the Agency's response to the petition. As the Agency intends to file a new response, incorporating the record from AS 96-11 is pointless. Incorporating the record from AS 96-11 would only result in confusion and the Agency's previous recommendation is irrelevant since it would be superseded by the new recommendation from the Agency.

In accordance with Section 106.415, the Board is required to hold a hearing on the petition prior to ruling on the adjusted standard. Chemetco cannot waive hearing in this matter. Therefore, the Board disregards Chemetco's waiver of hearing and will hold a hearing on the petition.

Pursuant to 35 Ill. Adm. Code 106.711, petitioner is required to publish notice of the filing of the petition in a newspaper of general circulation in the area likely to be affected. A certificate of publication shall be filed with the Board within 30 days of the filing of the petition. (35 Ill. Adm. Code 106.712.) Petitioner filed a certificate of publication with the Board on September 5, 1996, demonstrating that notice of the filing of the petition was published on August 20, 1996 in the Alton Telegraph.

The Board accepts the petition for hearing. This is a type of case for which the Act prescribes no deadline for decision, although the Act requires the petitioner to timely pursue disposition of the petition. Therefore, hearing must be scheduled and completed in a timely manner, consistent with Board practices and 35 Ill. Adm. Code Part 101 and Part 106, subpart G. The Board will assign a hearing officer to conduct hearings consistent with this order and the Clerk of the Board shall promptly issue appropriate directions to that hearing officer.

The assigned 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, a statement regarding credibility of witnesses and all actual exhibits to the Board within five days of the hearing. Any briefing schedule shall provide for final filings as expeditiously as possible.

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. The hearing officer and the parties are encouraged to expedite this proceeding as much as possible.

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 \_\_\_\_\_ day of \_\_\_\_\_, 1996, by a vote of \_\_\_\_\_.

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Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board