

ILLINOIS POLLUTION CONTROL BOARD
November 20, 1986

RICK MOORE, LEONARD MORRIS AND)
EDITH SIMPSON,)
)
Petitioners,)
)
v.) PCB 86-197
)
WAYNE COUNTY BOARD AND)
DAUBS LANDFILL, INC.,)
)
Respondents.)

ORDER OF THE BOARD (by J. Anderson):

This action is a third-party appeal filed November 6, 1986, pursuant to Section 40.1(b) of the Environmental Protection Act ("Act") (Ill. Rev. Stat. Ch. 111-1/2, par. 1040.1(b)). Petitioners appeal the decision of the Wayne County Board approving site location suitability approval.

By Order of November 6, 1986, the Board directed petitioners to file an amended petition and all parties to file memoranda concerning the timeliness of the filing of the petition for appeal. The following pleadings have been filed in response to that Order: separate motions to dismiss filed November 18 by the Wayne County Board (County) and Daubs Landfill, Inc. (Daubs); a letter received November 19, 1986 from petitioner Rick Moore requesting an extension of time to reply; and two November 19 filings from petitioner's attorney, which are an amended petition and a memorandum concerning the timeliness of filing.

The Board will first address Mr. Moore's letter. Due to his inability to contact his attorney to determine whether timely filings had been made in his behalf, Mr. Moore himself made a partial response to the Board's Order, requested additional time to provide additional information, and asked that he be personally served in this matter. The Board appreciates Mr. Moore's concerns regarding the timely progression of his action, and advises him that no extension of time is necessary as the filings required on the November 6 Order have been made on his behalf. Further, the Board will transmit courtesy copies of its Orders in this matter to Mr. Moore at his home address via first-class mail. The Board cannot, however, undertake to mail Mr. Moore copies of all filings made by all other parties in this matter, and will not order that Mr. Moore as well as his attorney be personally served by all other parties in this action, as communications to a party who is represented by any attorney are properly made through that attorney.

The Board notes that it is the professional responsibility of petitioners' attorney not only to timely take all actions necessary to press his client's action, but also to maintain appropriate communication with those clients concerning the progress of the case. The Board cautions counsel to take appropriate steps to fulfill his responsibilities.

As to the issue of the timeliness of the filing of this appeal, all parties are in agreement that the County's decision was rendered on September 30, 1986, that Section 40.1(b) of the Act provides for the filing of third-party appeals within 35 days of that decision, and that November 4 is the 35th day following that decision. However, as November 4 was a legal holiday, pursuant to Section 101.105(b) of the Board's Procedural Rules, the due date for filing was extended until November 5. Yet, the petition was not received by the Board until November 6.

By affidavit attached to the supplemental petition, petitioner asserts that the petition was mailed on November 3, and in its memorandum asserts that the Board should consider the date of filing as the postmark date consistent with the so-called "mailbox rule" contained in Supreme Court Rule 373.

In an action involving a permit appeal pursuant to Section 40 of the Act which provides a 35 day appeal period similar to that of Section 40.1(b), the Board construed the adoption of a limited version of the mailbox rule as appropriate to further the purposes of the Act. In that case, Interstate Pollution Control, Inc. v. IEPA, PCB 86-19, Order of March 27, 1986, the Board stated that:

"as to actions which must be commenced by a person within a statutorily defined time period, the Board will deem the initial pleading to be timely received if the accompanying certificate of service states that service was commenced before the expiration of the statutory period. However, the Board will continue to calculate its own decision period as commencing the day after the Board's actual receipt of the petition."

In recognition of its rationale in Interstate, as well as of the precedents cited by petitioners in their memorandum, the Board reaches a similar result here. The Board will deem the November 6 petition which was mailed on November 3 as timely received on November 5. The Board's decision deadline will be calculated as commencing November 7.

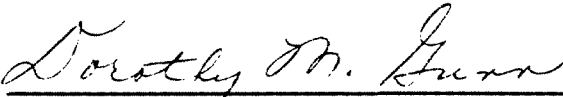
Respondent's motions to dismiss are denied. The Clerk is directed to provide all parties with a copy of the Interstate ruling.

This petition is accepted for hearing, and shall proceed according to the procedural directives contained in the Board's Order of November 6, 1986.

IT IS SO ORDERED.

J. T. Meyer dissented.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 20th day of November, 1986, by a vote of 5-1.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board