

ILLINOIS POLLUTION CONTROL BOARD
 March 5, 1987

CITY OF ROCK ISLAND,)	
)	
Petitioner,)	
)	
v.)	PCB 87-13
)	
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

ORDER OF THE BOARD (by B. Forcade):

This matter comes before the Board on a January 30, 1987, petition for variance filed by the City of Rock Island ("Rock Island"). On February 5, 1987, the Board issued an order finding the petition deficient in that it provided inadequate information on the date and location of the individual trihalomethane (THM) samples which comprised the "range" of values since 1981. The Board ordered that unless an amended petition was filed, the variance would be subject to dismissal. Additionally, the Board requested that Rock Island provide federal risk factor estimates used in promulgating the national THM standard. This request was not based on a finding of informational inadequacy but was merely made to supplement the record.

On February 27, 1987, Rock Island filed a Response to Board Order, which provided both the requested background information and specific THM data, as well as the federal risk assessment document. Rock Island, however, made a legal objection to the Board's finding that its petition was inadequate. Rock Island asserts that the Board is without statutory authority to require it to submit any additional information beyond its petition, which it considers to materially satisfy the requirements of 35 Ill. Adm. Code 104.121. Rock Island presumably does not view its Response to Board Order as an amended petition.

The Board reaffirms its February 5, 1987, finding of inadequacy of Rock Island's petition. On page 5 of the original petition, Rock Island states: "Individual samples taken by IEPA since 1981 have ranged from 0.033 to 0.346 mg/l for THM." This sentence constitutes the only THM data provided to the Board in the petition. In a variance, the Board must determine the extent and severity of existing and potential environmental and human health impacts. Such a sketchy, generalized "range" is inadequate for this purpose, absent either some sort of statistical analysis or specific enumeration of the individual data points. As Rock Island has provided new factual

information, deemed necessary by the Board for an adequate petition, this filing constitutes an amended petition for the purposes of calculating the statutory decision deadline.

On February 23, 1987, the Board received two citizen objections to this variance petition, thus, triggering a hearing. This matter is accepted for hearing.

Hearing must be scheduled within 14 days of the date of this Order and completed within 60 days of the date of this Order. The 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 and all actual exhibits to the Board within 5 days of the hearing. Any briefing schedule shall provide for final filings as expeditiously as possible and in no event later than 70 days from the date of this Order.

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 in conformance with the schedule above. This schedule will only provide the Board a very short time period to deliberate and reach a decision before the due date. The hearing officer and the parties are encouraged to expedite this proceeding as much as possible.

Within 10 days of accepting this case, the Hearing Officer shall enter a Hearing Officer Scheduling Order governing completion of the record. That Order shall set a date certain for each aspect of the case including: briefing schedule, hearing date(s), completion of discovery (if necessary) and pre-hearing conference (if necessary). The Hearing Officer Scheduling Order may be modified by entry of a complete new scheduling order conforming with the time requirements below.

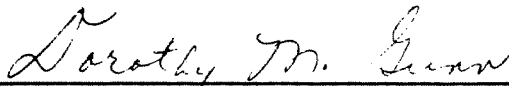
The hearing officer may extend this schedule only on a waiver of the decision deadline by the petitioner and only for the equivalent or fewer number of days that the decision deadline is waived. Such waivers must be provided in writing to the Clerk of the Board. Any waiver must be an "open waiver" or a waiver of decision until a date certain. Any waiver shall extend the time deadline of Section 104.180 regarding filing the Agency recommendation by the equivalent number of days, but in any circumstance the recommendation must be filed at least 20 days before the hearing.

Because of requirements regarding the publication of notice of hearing, no scheduled hearing may be canceled unless the petitioner provides an open waiver or a waiver to a date at least 75 days beyond the date of the motion to cancel hearing. This should allow ample time for the Board to republish notice of hearing and receive transcripts from the hearing before the due date. Any order by the hearing officer granting cancellation of hearing shall include a complete new scheduling order with a new hearing date at least 40 days in the future and at least 30 days prior to the new due date and the Clerk of the Board shall be promptly informed of the new schedule.

Because this proceeding is the type for which the Illinois Environmental Protection Act sets a very short statutory deadline for decisionmaking, absent a waiver, the Board will grant extensions or modifications only in unusual circumstances. Any such motion must set forth an alternative schedule for notice, hearing, and final submissions, as well as the deadline for decision, including response time to such a motion. However, no such motion shall negate the obligation of the hearing officer to set a date pursuant to the seventh paragraph of this Order, and to adhere to that Order until modified.

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 5th day of March, 1987, by a vote of 6-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board