

ILLINOIS POLLUTION CONTROL BOARD
June 25, 1987

IN THE MATTER OF:)
)
NEW SOURCE PERFORMANCE STANDARDS:) R87-20
ADDITION OF ALTERNATIVE)
PROCEDURE (CRITICAL ORIFICE AS)
CALIBRATION STANDARDS) TO METHOD 5,)
APPENDIX A)

RESOLUTION AND ORDER OF THE BOARD (by J.D. Dumelle):

This matter comes before the Board upon a June 16, 1987 notice (52 Fed. Reg. 22888) published by the United States Environmental Protection Agency (USEPA) of the promulgation of an amendment to the National Standards of Performance for New Stationary Sources (NSPS):

40 CFR 60 Appendix A
(35 Ill. Adm. Code 230 Appendix A)

Pursuant to Section 9.1 of the Environmental Protection Act, the Board is required to adopt amendments "in substance identical" to the federal NSPS amendments. The Board will do so through incorporation by reference of the federal amendments as peremptory amendments.

ORDER

The Board hereby adopts the following amendments to Title 35: Environmental Protection; Subtitle B: Air Pollution; Chapter I: Pollution Control Board; Part 230: New Source Performance Standards:

Appendix A
Reference Methods

The Board incorporates by reference 40 CFR 60, Appendix A, (1986); as amended at 51 Fed. Reg. 29104, August 14, 1986; as amended at 51 Fed. Reg. 32454, September 12, 1986; as amended 51 Fed. Reg. 42839, November 26, 1986; as amended at 51 Fed. Reg. 44803, December 12, 1986; as amended at 52 Fed. Reg. 5105, February 19, 1987; as amended at 52 Fed. Reg. 9778, March 26, 1987; as amended at 52 Fed. Reg. 10852, April 3, 1987; as amended at 52 Fed. Reg. 22888, June 16, 1987.

IT IS SO ORDERED.

The Board has construed identical "in accordance with the terms of" language contained in Section 40(b) of the Act concerning third-party appeals of the grant of hazardous waste landfill permits as giving the person who had requested the permit a) the right to a decision within the applicable statutory time frame (now 120 days), and b) the right to waive (extend) the decision period (Alliance for a Safe Environment, et al. v. Akron Land Corp. et al., PCB 80-184, October 30, 1980). The Board therefore construes Section 40.1(b) in like manner, with the result that failure of this Board to act in 120 days would allow the site location applicant to deem the site location approved. Pursuant to Section 105.104 of the Procedural Rules, it is each party's responsibility to pursue its action, and to insist that a hearing on the petition is timely scheduled in order to allow the Board to review the record and to render its decision within 120 days of the filing of the petition.

Transcription Costs

The issue of who has the burden of providing transcription in Board site location suitability appeals has been addressed in Town of Ottawa, et al. v. IPCB, et al., 129 Ill. App. 3rd. 472 N.E.2d 150 (Third District, 1984). In that case, the Court ordered the Board to assume transcription costs (472 N.E.2d at 155). The Supreme Court denied leave to appeal on March 14, 1985. In cognizance of this ruling, the Board will provide for stenographic transcription of the Board hearing in this matter.

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, written schedule for submission of briefs if any 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.

The hearing officer may extend this schedule only on a waiver of the decision deadline by the site location suitability

applicant 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.

Because of requirements regarding the publication of notice of hearing, no scheduled hearing may be canceled unless the site location suitability applicant 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 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 this Order.

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 2nd day of July, 1987, by a vote of 4-0.

Dorothy M. Gunn
Dorothy M. Gunn, Clerk
Illinois Pollution Control Board