

ILLINOIS POLLUTION CONTROL BOARD
February 7, 2002

EAST SIDE ACQUISITIONS, Inc. d/b/a,)
STATE STREET SHELL,)
)
Petitioner,)
)
v.) PCB 00-76
) (UST Fund)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

ORDER OF THE BOARD (by T.E. Johnson):

This is one of seven cases brought to the Board's attention by the hearing officer for the same reason: the failure by counsel for the respondent to file the record as ordered is preventing petitioner from filing a motion for summary judgment. *See* 35 Ill. Adm. Code 105.116 and hearing officer order of January 31, 2001, in E.G. Vogt Oil Company, Inc. v. IEPA, PCB 00-70; Freeburg Investors Group, Inc. v. IEPA, PCB 00-74; East Side Acquisitions, Inc. d/b/a State Street Shell v. IEPA, PCB 00-76; Linneman Oil Company v. IEPA, PCB 00-94; Granite City Sheet Metal v. IEPA, PCB 00-138; L. Wolf Company v. IEPA, PCB 00-139; and E.G. Vogt Oil Company, Inc. v. IEPA, PCB 00-141. Petitioner in each of the seven cases is represented by the same attorney. The same attorney has appeared for respondent in each case. In the interests of administrative economy, the hearing officer has been handling these actions as a group for the purposes of scheduling pre-hearing telephonic status calls.

Entry of the January 31, 2002 hearing officer order has at last spurred production of the late records. Respondent's counsel filed all but one of the records, accompanied by motions for leave to file *instanter*, on February 5-6, 2001. (The unfiled record is that in L. Wolf Company v. IEPA, PCB 00-139). As the Board and the parties cannot move these cases to a resolution without use of the Agency record, the Board has no choice but to grant each motion for leave to file *instanter*. But, in so doing, the Board in no way intends to countenance the pattern of delay and disregard for the Board and its processes exemplified in these cases.

These cases were filed on various dates between October 14, 1999 and March 1, 2000. Section 105.116 of the Board's procedural rules dictates that the record in appeals such as these must be filed:

within 30 days after the filing of the petition for review, unless . . .the Board or hearing officer orders a different filing date. If the State 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 (emphasis added).

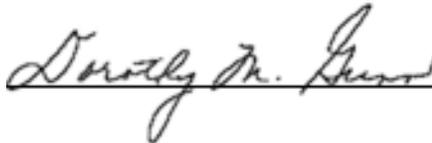
Counsel did not timely file the records in any of these cases. Motions for extensions of time were filed on January 14, 2000 in two cases only: Freeburg Investors Group, Inc. v. IEPA, PCB 00-74; East Side Acquisitions, Inc. d/b/a State Street Shell v. IEPA, PCB 00-76. The latter motion was timely filed, while the former was not.

On August 3, 2001, the respondent's counsel represented to the hearing officer and the petitioner that he would file the record in each of the seven cases. Counsel did not do so. On December 3, 2001, the hearing officer issued an order directing respondent to file the records. During a telephone status conference on January 10, 2002, the respondent's counsel represented that he would file the records by mailing them January 11, 2002. Counsel did not do so. When the hearing officer detailed these events to the Board in his January 31, 2002 order, counsel finally took action. As previously stated, six of the seven records were filed on February 5-6, 2002.

The Board has directed its hearing officers to bring any similar patterns of delay in other cases to the Board's early attention. Where necessary, the Board will consider imposing appropriate sanctions against the respondent or its counsel. *See* Ill. Adm. Code 101.800. The Clerk is directed to notify the parties of the entry of this order today, by means of telephone or telefax, in addition to making service in the usual way.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on February 7, 2002, by a vote of 7-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", written over a horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board