

ILLINOIS POLLUTION CONTROL BOARD

March 2, 2000

LIONEL TREPANIER, WES WAGER, )  
MAUREEN MINNICK, LORENZ JOSEPH, )  
and AVI PANDYA, )  
)  
Complainants, )  
)  
v. ) PCB 97-50  
) (Enforcement - Air, Land, Citizens)  
SPEEDWAY WRECKING COMPANY and the )  
BOARD OF TRUSTEES OF THE )  
UNIVERSITY OF ILLINOIS, )  
)  
Respondents. )

ORDER OF THE BOARD (by M. McFawn):

On January 6, 2000, the Board adopted a final opinion and order in this case, finding that the respondents had not committed the violations of the Illinois Environmental Protection Act (Act), 415 ILCS 5 (1998), alleged by the complainants. In the course of making that determination, the Board ruled that the testimony of complainant Lorenz Joseph was inadmissible because Joseph refused to take an oath or make an affirmation as to the truth of his testimony.

On February 15, 2000, the Board received two motions: a "Petition to vacate a portion of the Boards [sic] January 6, 2000 Opinion and Order" filed by Joseph, and a "Petition to Vacate the Board's Order of January 6, 2000 and for a Re-Hearing," filed by complainant Lionel Trepanier. Joseph seeks to have his testimony admitted. Trepanier asks that the Board vacate its January 6 order and hold a new hearing in this case. In his motion, Trepanier specifically argues that the motion is timely under 35 Ill. Adm. Code 103.240.

On February 22, 2000, the respondents filed "Respondents' Joint Motion to Strike Petitioners' Petitions to Vacate the Board's Order of January 6, 2000 as Untimely." Respondents assert that Joseph's and Trepanier's motions were filed after the last date allowed for filing motions for reconsideration or modification of a final order under 35 Ill. Adm. Code 101.246(a). The Board received no response to respondents' motion.

Section 101.246(a) provides:

- a) Any motion for reconsideration or modification of a final Board order shall be filed within 35 days of adoption of the order.

Respondents contend that this provision, rather than Section 103.240, establishes the time for filing motions for reconsideration or modification of a final Board order. The Board notes 35 Ill. Adm. Code 101.240, which provides:

This Subpart [35 Ill. Adm. Code 101.Subpart H, containing Section 101.246] applies to all Board proceedings generally. However, to the extent that 35 Ill. Adm. Code 102 through 120 conflict with or supplement this Subpart, that more specific Part governs.

Because 35 Ill. Adm. Code 103 (containing Section 103.240) supplements Subpart H of Part 101, the more specific provisions of Section 103.240 apply to motions to reconsider or modify orders in enforcement actions. In this case, however, the result under Section 101.246 or Section 103.240 is the same.

Section 103.240 provides:

Within 35 days after the adoption of a final order, any party may file a motion for rehearing or modification of the order or to vacate the order or for other relief. \* \* \* Failure of a party to appeal a final order or to file for appellate court review within 35 days of adoption of the final order waives all right to review except as set out in [35 Ill. Adm. Code] 103.241.

Section 103.241 provides for relief from a final Board order after the 35 day period has run based on newly discovered evidence or fraud, or where an order is void.

The Board's order in this case was entered, as noted, on January 6, 2000. By our count, 35 days after January 6 is February 10, 2000. These motions were received by the Board on February 15, 2000; the notice of filing to which they were attached states that they were mailed on February 14. The motions are thus untimely.

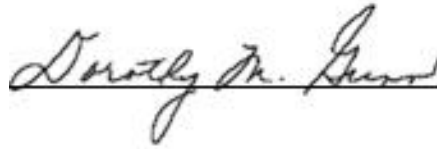
Trepanier argues that the motions are timely based on Section 41 of the Act, 415 ILCS 5/41 (1998), which provides that "a petition for review may be filed within 35 days from the date that a copy of the order or other final action sought to be reviewed was served on the party affected by the order[.]" Section 41, however, deals with appeals of Board orders to the Appellate Court. Trepanier argues that "section 103.240, sentence 4, states the time period for filing an appeal of a final order is the same as the time period for appellate court review[.]" This statement mischaracterizes Section 103.240. The sentence to which Trepanier refers, the last sentence quoted above, concerns the effect of failure to file a timely appeal. The regulation states that the time for filing an appeal is 35 days from the date of adoption of a final order, rather than service of a final order as Section 41 provides. This discrepancy results from Section 41 having been amended after Section 103.240 was promulgated; previously, adoption, rather than service, started the clock running. See 415 ILCS 5/41 (1992). This change in the time for filing a petition in the Appellate Court, however, has no effect on the time for filing motions to vacate before the Board. That time period is unambiguously set at 35 days from adoption in the first sentence of Section 103.240.

For the foregoing reasons, respondents' motion is granted, and Joseph's and Trepanier's motions are stricken as untimely.

IT IS SO ORDERED.

Section 41 of the Environmental Protection Act (415 ILCS 5/41 (1998)) provides for the appeal of final Board orders to the Illinois Appellate Court within 35 days of service of this order. Illinois Supreme Court Rule 335 establishes such filing requirements. See 172 Ill. 2d R. 335.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 2nd day of March 2000 by a vote of 6-0.

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

Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board