

ILLINOIS POLLUTION CONTROL BOARD
April 9, 1992

JAMES W. TURNER, SR.,)	
)	
Complainant,)	
)	
v.)	PCB 91-148
)	(Enforcement)
DON FRANKE,)	
)	
Respondent.)	

ORDER OF THE BOARD (by R.C. Flemal):

This matter comes before the Board on a motion for rehearing filed by Don Franke (Franke) on March 25, 1992. Franke states that he retained counsel seven days before the hearing, and did not have adequate time to prepare his defense. Franke also alleges that although he did engage in discovery with the complainant, complainant did not fully comply. Franke requests a rehearing in this matter pursuant to 35 Ill. Adm. Code 103.240, further asserting that the hearing was conducted in an unfair manner.

Upon review of the record, the Board finds that the hearing was conducted in a fair manner and that Franke had adequate opportunity to present his defense. In its February 27, 1992 opinion, the Board addressed the issue of an additional hearing:

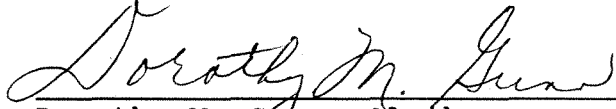
At points during the hearing, the attorneys for respondents in PCB 91-146 and PCB 91-148 joined in objecting to certain dates of alleged noise occurrences attested to by witnesses. The objection was based on the fact that these dates were not disclosed prior to hearing through discovery and in the complaint, resulting in alleged surprise. The hearing officer gave the respondents opportunity to come back on another date to rebut anything they had heard. The attorney for respondent Franke refused, stating that no rebuttal is necessary. (Tr. 122.) The Board finds that there was an opportunity to cure any alleged surprise; therefore the objection fails.

It is only after the Board rendered its determination in favor of the complainant that Franke now desires an additional hearing. The motion for rehearing is denied.

IT IS SO ORDERED.

Section 41 of the Environmental Protection Act, Ill. Rev. Stat. 1991 ch. 111½ par. 1041, provides for appeal of final orders of the Board within 35 days. The Rules of the Supreme Court of Illinois establish filing requirements.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 9th day of April, 1992, by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board