

ILLINOIS POLLUTION CONTROL BOARD
May 23, 1991

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	
)	
v.)	PCB 90-89
)	(Enforcement)
FRED JOHNSON, JOHNSON & BRIGGS)	
TANK TRUCK SERVICE, a/k/a)	
JOHNSON & BRIGGS TANK TRUCK)	
& HEATER SERVICE)	
an Illinois corporation,)	
)	
Respondent.)	

ORDER OF THE BOARD (by J. C. Marlin):

This matter comes before the Board on the Agency's May 16, 1991 Motion To Reinstate Herman L. Loeb as a party respondent. This motion essentially requests reconsideration of the Board's Order of September 13, 1990 which dismissed Mr. Loeb as a respondent due to the Agency's failure to comply with the notice requirements of Section 31(d). For the reasons expressed below, the Board on its own motion strikes the Agency's motion as untimely filed.

This action was filed with the Board on May 1, 1990. On August 1, Mr. Loeb filed his motion to dismiss. The Agency's motion alleges that a 31(d) letter was mailed on August 13, 1990, and that a meeting had been set for September 13, 1990. Having received no response to Mr. Loeb's motion, the Board entered its dismissal Order on September 13, 1990. Mr. Loeb did not attend the scheduled September 13 meeting and has not met with the Agency since that time.

Procedural rule 103.240 allows a party to seek relief within 35 days of the entry of a final order. The Agency did not do so here.

Procedural rule 103.241(b) allows a party to seek relief from one year after entry of an order where there exists:

- 1) Newly discovered evidence which by due diligence could not have been discovered in time under Section 103.224; or
- 2) Fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; or
- 3) Void order.

None of these conditions exist here, and the Agency has not explained the reasons for the delay.

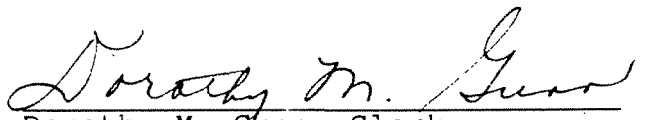
Mr. Loeb could reasonably expect that the order of dismissal was final to him as of October 18, 1990. Furthermore, Mr. Loeb most likely would not have been a party to any negotiations that may be ongoing between the Agency and the current Respondents in this proceeding. This would place Mr. Loeb at a disadvantage. Reopening this matter seven months later would simply not be fair.

Again, the Agency's motion is stricken.

IT IS SO ORDERED.

B. Forcade dissented.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 23rd day of May, 1991, by a vote of 5-1.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board