

ILLINOIS POLLUTION CONTROL BOARD

August 19, 1999

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

ORDER OF THE BOARD (by K.M. Hennessey):

This matter is before the Board on an interlocutory appeal of a ruling of the hearing officer. Complainants Lionel Trepanier (Trepanier) and Wes Wager (Wager) appeal the hearing officer's denial of their motion for additional time to file initial posthearing briefs. For the reasons set forth below, the Board affirms the hearing officer's ruling. However, the Board grants Trepanier and Wager 14 days from the date of this order to file briefs in reply to respondents' joint posthearing brief.

BACKGROUND

Hearings in this matter concluded on May 12, 1999. At the end of the hearing, the hearing officer set a briefing schedule after consulting with the parties. The hearing officer documented the briefing schedule in a May 27, 1999 order. Complainants' briefs were due 28 days after the Board's receipt of the hearing transcript, *i.e.*, by June 21, 1999. Respondents' response briefs were due by July 19, 1999, and complainants' reply briefs were due by August 9, 1999.

Complainants failed to file any briefs by June 21, 1999. On June 22, 1999, Trepanier and Wager moved the hearing officer to allow them until July 21, 1999, to file briefs. They stated in the motion that they had been occupied with five litigation matters pending in other venues. Respondents opposed the motion.

On July 1, 1999, the hearing officer denied the motion. The hearing officer noted that the motion "does not present information that was not considered when setting the briefing schedule agreed to by the complainants" and that the "current briefing schedule was extended at the hearing to accommodate the complainants' needs." Order at 1.

Respondents timely filed a joint brief on July 19, 1999. Complainants failed to file any reply briefs.

On August 5, 1999, Trepanier and Wager filed an interlocutory appeal of the hearing officer's July 1, 1999 denial of the motion for additional time. Trepanier and Wager state that they agreed to the briefing schedule because they believed that motions for more time to file briefs were granted routinely. They also stated that "it is grossly unfair to deny them arguments for the case . . ." Appeal at 1.

On August 10, 1999, respondents filed a joint response opposing the interlocutory appeal.¹ Respondents assert that they would be prejudiced if the Board allows Trepanier and Wager to file their initial posthearing briefs because respondents would not have an opportunity to respond to their arguments. Response at 4-5. Respondents also state that the Board should not permit Trepanier and Wager to file reply briefs because they have offered no reason to justify an extension of the August 9, 1999 filing deadline. *Id.* at 5.

DISCUSSION

Initially, the Board notes that “[n]o interlocutory appeal of a motion may be taken to the Board from a ruling of the Hearing Officer, except by allowance of the Board after motion filed by a party or the Hearing Officer.” 35 Ill. Adm. Code 103.140(f). Because the interlocutory appeal of Trepanier and Wager involves posthearing briefs, the Board cannot meaningfully address the question in its final opinion and order. Accordingly, the Board will allow this interlocutory appeal and address its merits below.

The Board finds that the hearing officer’s reasons for denying the motion for additional time were sound. Complainants’ initial briefs were not due until almost six weeks after the hearings in this matter concluded, including a 28-day period after the hearing transcript was available. This generous briefing schedule, to which complainants agreed, took into account the other litigation matters that Trepanier and Wager raised in the motion. The Board affirms the hearing officer’s ruling.

The Board notes that the motion and the hearing officer’s ruling addressed only the initial posthearing briefs. The hearing officer’s denial had no impact on complainants’ opportunity to file reply briefs under the agreed upon briefing schedule. Nevertheless, the interlocutory appeal suggests that Trepanier and Wager thought that the hearing officer’s denial of the motion also denied them the opportunity to file reply briefs.

Because of this apparent confusion, the Board will grant Trepanier and Wager 14 days from the date of this order to file briefs in reply to respondents’ joint posthearing brief. In these reply briefs, Trepanier and Wager may respond to respondents’ brief, but may not address any issues other than those discussed in respondents’ brief.

The Board notes that this additional time to file reply briefs and the ample time periods that the hearing officer provided to file briefs are but two of many instances when the Board or the hearing officer has made efforts to accommodate the *pro se* complainants in this case. Neither the Board nor the hearing officer will entertain any motions from Trepanier or Wager for additional time to file reply briefs or to file the briefs late.

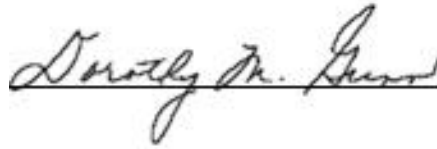
ORDER

1. The Board affirms the hearing officer’s July 1, 1999 denial of the motion of Trepanier and Wager for additional time to file initial posthearing briefs.
2. Within 14 days after the date of this order, Trepanier and Wager may file briefs in reply to respondents’ joint posthearing brief, filed on July 19, 1999. In these reply briefs, Trepanier and Wager may respond to respondents’ brief, but may not address any issues other than those discussed in respondents’ brief.

IT IS SO ORDERED.

¹ On August 17, 1999, respondent Speedway Wrecking Company filed a motion to correct a typographical error in the joint response. The Board grants the motion.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 19th day of August 1999 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