

ILLINOIS POLLUTION CONTROL BOARD  
March 22, 1990

CENTRALIA ENVIRONMENTAL )  
SERVICES, INC., )  
 )  
Petitioner, )  
 )  
v. ) PCB 89-170  
 ) (Permit Appeal)  
ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
 )  
Respondent. )

ORDER OF THE BOARD (by M. Nardulli):

This matter comes before the Board on a Motion for Extension of Time to File Brief, received March 20, 1990, by petitioner Centralia Environmental Services, Inc. ("CESI") and a Motion of Respondent Illinois Environmental Protection Agency to Exclude petitioner's Brief and to Decide Proceeding Upon Existing Record filed the same day by respondent Illinois Environmental Protection Agency ("Agency"). CESI has also provided an unqualified waiver of the decision deadline until April 26, 1990.

By Order of the Hearing Officer, simultaneous briefs were due to be filed no later than January 16, 1990. While the Agency timely filed its brief, CESI has yet to file its brief although it had filed a waiver of the decision deadline to March 31, 1990. On March 8, 1990, the Board entered an Order directing CESI to explain the delay and to file a motion for extension of time to file its brief. CESI timely filed its motion. In its motion, CESI states that it has been unable to timely file its brief because the transcripts were not prepared. According to CESI, it "was advised on February 20, 1990 that the final transcript was ready to ship and ... [are] 1,154 pages in length." CESI did not receive the transcript until March 12, 1990. CESI also states that counsel will begin a jury trial on March 22, 1990 which is expected to take three weeks to conclude. CESI states that it has not, and will not, read the Agency's brief. On this basis, CESI requests an extension until April 19, 1990 to file its brief.

By its motion, the Agency requests that the Board exclude CESI's brief and decide this case on the basis of the existing record. According to the Agency, "the five-part hearing transcripts have been available in segments between January 23, 1990 and February 20, 1990." The Agency asserts that it would be highly prejudiced if the Board allowed CESI to file its brief at this late date because the briefs were intended to be filed simultaneously. The Agency states that CESI will have the unfair

advantage of refuting the Agency's legal arguments as well as referencing the transcripts in its brief, which the Agency was unable to do because it timely filed its brief.

Initially, the Board notes that, by deciding these two motions at this time, it has not allowed either party to respond to the other party's motion. The Board is entering its decision on these motions at this time because of the time constraints imposed upon the Board for rendering its decision on the merits in this permit appeal. Where undue delay would result, the Board may rule upon a motion prior to the expiration of the seven-day response period. (35 Ill. Adm. Code 101.241(b).)

The Board will first address the Agency's motion. The Board agrees in certain respects with the Agency and is concerned that CESI may have secured an unfair advantage over the Agency by not submitting its brief when simultaneously due. However, the Agency-requested sanction of denying CESI the right to file its brief would leave the Board with the obligation to decide this case without the benefit of CESI's legal arguments. A requirement that the Board correctly decide this case without the informed legal arguments of one of the parties would punish the Board, not the late filing party. (See, National Environmental Services Corp. v. IEPA, PCB 89-129 (March 16, 1990).) Therefore, the Agency's motion is denied.

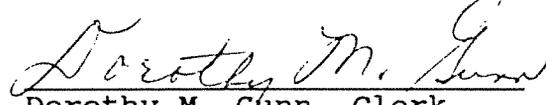
Further, this case does not present the severity of conduct which would justify severe sanctions such as that imposed by the Board in Modine Manufacturing Co. v. PCB and upheld by the appellate court. (548 N.E.2d 1145 (2d Dist. 1990).) In Modine, the court stated that the imposition of severe sanctions such as dismissal would be appropriate "only in those cases where the actions of a party show deliberate, contumacious, or unwarranted disregard of the [Board's] authority." In the instant case, unlike Modine, CESI has not continually ignored Board directives. Therefore, this case differs from Modine and does not warrant dismissal.

The Board now addresses CESI's motion. While it appears that there was a delay in the transcribing of the report of proceedings, the Board questions CESI's assertion that it could not obtain the transcripts from the court reporter until March 12, 1990 when they were available and "ready to ship" on February 20, 1990. Exhibit E, an invoice statement from the court reporter, attached to CESI's motion, shows that the transcripts were not paid for until March 3, 1990. Perhaps the delay in payment explains the delay in receiving the transcripts. Most disturbing, however, is CESI's failure to file a motion for extension of time when it became aware that it would not be able to timely complete its brief. Apparently, CESI operated under the assumption that the filing of a waiver of decision deadline obviated the need to file a motion for extension of time to file its brief. The Board seeks to make clear that this assumption is incorrect. CESI's failure to timely file a motion for extension of time illustrates a disregard for the Board's obligation to manage its docket.

Based upon the foregoing, the Board denies CESI's motion for extension of time to file its brief no later than April 19, 1990. However, the Board grants CESI an extension until April 2, 1990 to file its brief. To comply with this Order, CESI's brief must be **received** by the Board and the Agency no later than 4:30 p.m. on April 2, 1990. The Agency is given leave to file a reply brief which must be **received** by the Board no later than April 11, 1990. No other briefs shall be filed.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 22<sup>nd</sup> day of March, 1990 by a vote of 7-0.

  
Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board