

ILLINOIS POLLUTION CONTROL BOARD
May 20, 1993

THE OK TRUCKING COMPANY,)
)
Petitioner,)
)
v.) PCB 92-108
) (UST Fund)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

ORDER OF THE BOARD (by B. Forcade):

This petition for review was filed on July 21, 1992. The petitioner submitted a status report to the Board on November 13, 1992. The status report states that the Office of the State Fire Marshal (OSFM) has denied OK Trucking's appeal of the order denying registration of two underground storage tanks. OK Trucking has appealed the OSFM's denial of registration to the Circuit Court of Cook County. The petitioner notes that Board of Education v. Armstead 91 CH 4963 (Circuit Court of Cook County, County Department, Chancery Division) in which the court issued its memorandum opinion on September 11, 1992 addresses a similar question and disposes of the issue in OK Trucking's administrative review with the OSFM.

The Board notes that Board of Education v. Armstead has been appealed to the Appellate Court of Illinois, First Judicial District. (See Community Consolidated School District No. 15 v. IEPA (December 17, 1992), PCB 91-075.) A status report filed in Weyerhasuer Co. v. IEPA, PCB 92-105, states that appellee's brief in Board of Education v. Armstead, No. 92-4145 (Ill. App. Ct., 1st Dist.) is due on June 2, 1993; and that a cross-appeal has been filed so additional briefing will be allowed and the State has requested oral arguments.

This a deadline case where 3 limited waivers have been submitted and 1 hearing has been cancelled. The continual filing of limited waivers and the cancellation of hearings taxes the administrative resources of the Board. Further, the cancellation of a hearing that has already been noticed in newspapers of general circulation wastes the Board's resources and misinforms the public.

To allow adequate time for the filing of briefs and Board deliberation before the deadline, the Board requires that hearings be scheduled approximately 120 days prior to the decision deadline. It is the responsibility of the petitioner to provide adequate waivers and proceed with the matter in a timely fashion, yet not to cancel hearings after notice has been published without substantial justification.

The Board notes that the decision date in this matter is presently September 16, 1993. Based on this deadline, the hearing officer must schedule the hearing on or before June 4 and complete hearings by July 16, 1993. However, the hearing officer is authorized to modify this schedule by order in the event that an additional waiver is received.

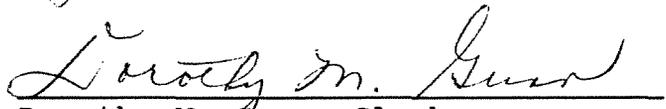
If an additional waiver is filed, the parties are directed to submit status reports to the Board. Status reports should be submitted to the Board by June 4, 1993.

Failure to provide the Board with an adequate waiver or cancellation of noticed hearings may subject this matter to dismissal for want of prosecution.

The Board reiterates its concern over the filing of limited waivers in cases where a date for completion of the case cannot be determined. The approaching deadline requires the Board to monitor the progress of the parties and order the scheduling of hearings. Given the present briefing schedule before the Appellate Court in Board of Education v. Armstead it is unlikely that a decision from the Court would be available before the September 16, 1993 deadline in the case pending before the Board and certain that a decision will not be reached prior to the time when hearings must be scheduled in this matter. Yet, an additional waiver has not been filed. This situation creates a burden on the Board in tracking cases where no action is taking place and there is an approaching deadline. The Board must order this case to hearing to meet the deadline. The use of limited waivers especially for short periods of time, may be inappropriate in this type of case. The Board also notes that if the petitioner wishes to file limited waivers, it is the responsibility of the petitioner to file an additional waiver in a timely manner or schedule the hearing as required to meet the deadline.

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 20th day of May, 1993, by a vote of 6-0.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board