

ILLINOIS POLLUTION CONTROL BOARD
July 30, 1992

CITY OF LAKE FOREST,)
)
 Petitioner,)
)
 v.) PCB 92-36
) (Underground Storage Tank Fund
) Reimbursement Determination)
)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Respondent.)

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

On July 1, 1992, petitioner filed a motion to reconsider the Board's order of June 23, 1992, accompanied by a reply brief. The Agency filed a response in opposition on July 8, 1992.

The City asserts that the Board erred, and should reconsider its ruling, because the City did not have an opportunity to file a reply brief in this matter, asserting that the City "should have the opportunity to reply given by the Hearing Officer."

Following the May 14, 1992 hearing, the hearing officer directed that the City file its brief on May 24, the Agency its brief on June 1, and the reply brief on July 8.

On June 23, 1992, the Board rendered its decision based on the one brief it had received: the City's May 22, 1992 brief. Board decision on this date was necessary, as it was the last regularly scheduled meeting prior to June 25, 1992, the last day of the 120 day decision period established by Sections 22.18b(g) and 40 of the Act. Following the Board's adoption of its opinion and order and adjournment of the meeting, the Board received a filing from the Agency entitled "Waiver of Post-Hearing Brief".¹ This document referred the Board to Village of Lincolnwood (June 4, 1992), PCB 91-83, which the Board had independently cited as a controlling precedent in this case.

The Board finds that the City had no absolute right to file a reply brief in this case, in which no brief had been filed by the Agency. (See Illinois Supreme Court Rule 341(g), Ill. Rev. Stat. 1991, ch. 110A, par. 341(g)). Additionally, any briefing schedule

¹Had the Board received this filing prior to rendering its decision, it would have been listed in the first paragraph of the Board's opinion with the other filings.

established by a hearing officer cannot override the statutory decision deadline which the Board must meet.

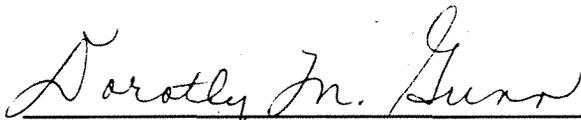
The Board will, however, grant the City's motion to reconsider as it had no opportunity in its May 22 filing to address the Board's June 4 Lincolnwood ruling. The City's brief fails to persuade the Board that Lincolnwood is distinguishable from the instant case. Upon reconsideration, the Board affirms its opinion and order of June 23, 1992.

IT IS SO ORDERED.

J. Anderson dissented.

Section 41 of the Environmental Protection Act (Ill. Rev. Stat. 1991, ch. 111 1/2, par. 1041) provides for the appeal of final Board orders 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 30th day of July, 1992, by a vote of 5-1.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board