

ILLINOIS POLLUTION CONTROL BOARD
July 30, 1992

MOLINE/DUTCHWAY DRY CLEANERS,)	
)	
Petitioner,)	
)	
v.)	PCB 92-102
)	(Underground Storage
ILLINOIS ENVIRONMENTAL)	Tank Reimbursement)
PROTECTION AGENCY,)	
)	
Respondent.)	

ORDER OF THE BOARD (by B. Forcade):

On July 13, 1992, Moline/Dutchway Dry Cleaners (Dutchway) filed a petition for review of an Underground Storage Tank Reimbursement Determination for its facility located at 2301 27th Street in Moline, Rock Island County. This matter is accepted for hearing.

On July 29, 1992, Dutchway, by its consultants, Beling Consultants, Inc., filed a letter purporting to extend the deadline for the filing of the Illinois Environmental Protection Agency (Agency) record in this case until September 9, 1992. The letter also states that Beling and Dutchway understand that the final decision deadline for this case "could be" as late as December 25, 1992. However, Dutchway has no authority to waive the deadline for the filing of the Agency record. That deadline (14 days after notice of a petition for review) is contained in a Board procedural rule, and can only be extended by the Board itself. (35 Ill.Adm.Code 105.102.) If an extension of the deadline to file the record is needed, the Agency must make such a request. Of course, Dutchway can waive any objection to an Agency request for extension of the 14-day deadline. The Board notes, however, that it relies on interim deadlines to assure timely submittal of information by the Agency so that the Board can make a timely final decision. Therefore, an extension of time to file the record is doubtful absent a waiver of the final decision deadline. If Dutchway wishes to waive the deadline for final Board decision, it must specifically waive that deadline. Such a waiver must be either an open waiver or a waiver until a calendar date certain. (35 Ill.Adm.Code 101.105.) A statement that the final decision deadline "could" be as late as December 25, 1992, is not a waiver.

Hearing must be scheduled within 14 days of the date of this order and completed within 60 days of the date of this order. The hearing officer shall inform the Clerk of the Board of the time and location of the hearing at least 40 days in advance of hearing so that public notice of hearing may be published. After hearing, the hearing officer shall submit an exhibit list, and all actual exhibits to the Board within 5 days of the hearing. Any briefing

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schedule shall provide for final filings as expeditiously as possible and in no event later than 70 days from the date of this order.

If after appropriate consultation with the parties, the parties fail to provide an acceptable hearing date or if after an attempt the hearing officer is unable to consult with the parties, the hearing officer shall unilaterally set a hearing date in conformance with the schedule above. This schedule will only provide the Board a very short time period to deliberate and reach a decision before the due date. The hearing officer and the parties are encouraged to expedite this proceeding as much as possible.

Within 10 days of accepting this case, the Hearing Officer shall enter a Hearing Officer Scheduling order governing completion of the record. That order shall set a date certain for each aspect of the case including: briefing schedule, hearing date(s), completion of discovery (if necessary) and pre-hearing conference (if necessary). The Hearing Officer Scheduling order may be modified by entry of a complete new scheduling order conforming with the time requirements below.

The hearing officer may extend this schedule only on a waiver of the decision deadline by the petitioner and only for the equivalent or fewer number of days that the decision deadline is waived. Such waivers must be provided in writing to the Clerk of the Board. Any waiver must be an "open waiver" or a waiver of decision until a date certain.

Because of requirements regarding the publication of notice of hearing, no scheduled hearing may be canceled unless the petitioner provides an open waiver or a waiver to a date at least 120 days beyond the date of the motion to cancel hearing. This should allow ample time for the Board to republish notice of hearing and receive transcripts from the hearing before the due date. Any order by the hearing officer granting cancellation of hearing shall include a complete new scheduling order with a new hearing date at least 40 days in the future and at least 30 days prior to the new due date and the Clerk of the Board shall be promptly informed of the new schedule.

Because this proceeding is the type for which the Illinois Environmental Protection Act sets a very short statutory deadline for making a decision, absent a waiver, the Board will grant extensions or modifications only in unusual circumstances. Any such motion must set forth an alternative schedule for notice, hearing, and final submissions, as well as the deadline for decision, including response time to such a motion. However, no such motion shall negate the obligation of the hearing officer to establish a Scheduling order pursuant to the requirements of this order, and to adhere to that order until modified.

IT IS SO ORDERED.

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I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 20th day of July, 1992, by a vote of 6-0.

Dorothy M. Gunn
Dorothy M. Gunn, Clerk
Illinois Pollution Control Board