

ILLINOIS POLLUTION CONTROL BOARD  
December 19, 1991

D & B REFUSE SERVICE, INC.,     )  
  )  
    Petitioner,                        )  
  )  
v.                                        )     PCB 89-106  
  )     (Permit Appeal)  
ILLINOIS ENVIRONMENTAL                )  
PROTECTION AGENCY,                    )  
  )  
    Respondent.                         )

ORDER OF THE BOARD (by M. Nardulli):

This matter is before the Board on petitioner's motion for reconsideration of the Board's opinion and order of October 24, 1991 upholding the Illinois Environmental Protection Agency's (Agency) permit denial. On December 17, 1991 the Agency filed its response.<sup>1</sup>

In its October 24, 1991 opinion and order, the Board found that denial reasons nos. 2, 3, 4 and 5 were improper bases for denial. However, the Board also found that petitioner failed to challenge all of the Agency's denial reasons (denial reasons nos. 1 and 6) and, therefore, affirmed the Agency's permit denial. The Board also noted that petitioner failed to present any evidence at hearing and failed to file a post-hearing brief, choosing to rely solely on its petition for review.

Petitioner now asserts in its motion for reconsideration that the Board erred in finding that it did not challenge denial reasons nos. 1 and 6. Petitioner asserts that it "did not discuss in detail the shortcomings of grounds 1 and 6 because those grounds were patently and facially erroneous, and also because the resolution of reasons 2, 3, 4, and 5 necessarily decided the resolution of grounds 1 and 6." Accordingly, petitioner requests that the Board reconsider its decision, find that denial reasons nos. 1 and 6 are also improper and direct the Agency to issue the permit.

The Board will open this matter for reconsideration to address petitioner's contentions. In its opinion, the Board rejected the Agency's contention that petitioner failed to carry its burden of proof by failing to present any evidence at hearing and by failing to file a post-hearing brief. (Board Op. at 3-4.) The Board

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<sup>1</sup> The Agency's motion for extension of time to December 17, 1991 to file its response is granted.

stated that because of the posture of a permit appeal, which is based upon the Agency record, it is possible for a petitioner to carry its burden of proving that its application package demonstrated compliance with the Act and regulations without presenting additional evidence at hearing or filing a brief. (Board Op. at 4.) The Board noted that this was particularly true where, as in this case, petitioner had presented a minimal argument in its petition for review. (Board Op. at fn. 2.) However, the Board also made clear that a petitioner may not simply dump the burden of argument and research on the Board and that a petitioner who fails to present evidence at hearing and file a brief risks waiver of arguments before the Board. The Agency correctly notes that "[a] petitioner cannot file its [petition] and expect the Board to act as its advocate, formulating the winning arguments and researching legal authority for [petitioner]."

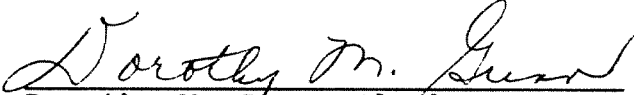
In reviewing the petition for review, the Board found sufficient, albeit minimal, argument relating to petitioner's challenges to denial reasons nos. 2, 3, 4, and 5 such that the Board could address the merits of these denial reasons. However, the petition does not set forth any argument relating to denial reasons nos. 1 and 6, nor does it list these to denial reasons as being challenged as the petition does with denial reasons 2, 3, 4 and 5. (Petition at 3-7.) We reject petitioner's contention that because the petition for review opens with the statement that petitioner "respectfully petitions for review of the denial of D & B's application ...", this is a sufficient challenge to all denial reasons. The Board also rejects petitioner's contention that denial reasons nos. 1 and 6 were so intertwined with the other denial reasons that resolution of the latter decided the merits of denial reasons nos. 1 and 6. The petition did not challenge denial reasons nos. 1 and 6 and the Board is under no obligation to discern this relationship in the absence of some argument to this effect by petitioner. If the Board were to reverse itself and find that petitioner adequately challenged denial reasons nos. 1 and 6, the Board would be placing its imprimatur on a petition for review which stated only that "this is an appeal of the Agency's denial of a permit." This the Board will not do.

The Board has reconsidered its October 24, 1991 opinion and order and declines to reverse its determination that petitioner failed to challenge all of the Agency's denial reasons. The Agency's decision is affirmed.

IT IS SO ORDERED.

Section 41 of the Environmental Protection Act (Ill. Rev. Stat. 1989, ch. 111 1/2, par. 1041) provides for the appeal of final Board Orders within 35 days. The Rules of the Supreme Court establish filing requirements.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board hereby certify that the above Order was adopted on the 19<sup>th</sup> day of December, 1991 by a vote of 6-0.

  
Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board