

ILLINOIS POLLUTION CONTROL BOARD
June 17, 1993

PEOPLE OF THE STATE OF)
ILLINOIS,)
)
Complainant,)
)
v.) PCB 92-164
) (Enforcement)
)
BERNIECE KERSHAW and DARWIN)
DALE KERSHAW d/b/a KERSHAW)
MOBILE HOME PARK,)
)
Respondents.)

ORDER OF THE BOARD (by G. T. Girard):

On June 9, 1993, the People filed a motion, pursuant to 35 Ill. Adm. Code 101.241(c), for leave to file a reply to Respondent's Memorandum in Opposition to Complainant's Motion. The Kershaws filed a response in opposition on June 16, 1993.

The People state that:

If the Board denies complainant's Motion to Disqualify without having allowed complainant an opportunity to present its entire argument with respect to the issue of Mr. Kuntz's qualification to represent the respondents, the interests of the parties and the public and the integrity of the Board's proceedings may be compromised in the manner more fully described in the complainant's Motion to Disqualify. Any minimal delay which would result from complainant's being allowed to file a written reply would be substantially outweighed by the prejudice which could result if the complainant is not allowed to file a reply.

In response, the Kershaws contend that:

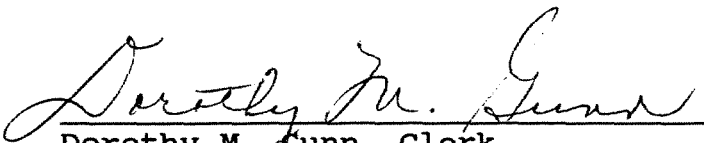
Complainant's Motion fails to demonstrate material prejudice. Rather, the motion asserts that complainant has not presented its "entire argument," Motion at par. 4. Complainant's failure to present the entire argument in its motion should not allow it to circumvent the Board's rules. These rules were intended to avoid the kind of piecemeal

briefing complainant now seeks, and to provide for the speedy determination of Board proceedings. Complainant, having substantially delayed reaching the merits of this proceeding by filing its original motion to disqualify, will obtain additional delay if the instant motion is granted. Indeed, it will be respondents who would be materially prejudiced by an inability to respond to any new arguments raised by complainant, and, having had their resources significantly diverted from the merits of the case by filing of the Motion to Disqualify, will be forced to shoulder a further burden. As suggested in Respondent's Memorandum in Opposition, to the extent the Board desires a further airing of issues which transcend the instant case, it may wish to initiate inquiry hearings on the matter.

The People's motion is granted. The motion to disqualify poses a matter of first impression. The Board believes that this is a circumstance where allowing a reply will aid the Board in its determination of this issue, and is the type of situation envisioned by the Board when the "leave to reply" rule was adopted. However, the Board does not intend to allow "piecemeal" briefing as the Kershaws fear. The reply must be limited to addressing points raised by the Kershaws in their response; no new points may be raised. The People's reply must be received by the Board on or before June 25, 1993. This will allow the Board to consider the substance of the motion to disqualify at its next scheduled meeting on July 1, 1993. Any minimal delay in reaching the outcome of the motion to reconsider the default order is outweighed by the benefits to the Board's deliberative processes.

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 17th day of June, 1993, by a vote of 7-0.


 Dorothy M. Gunn, Clerk
 Illinois Pollution Control Board