

ILLINOIS POLLUTION CONTROL BOARD  
November 3, 1988

IN THE MATTER OF: )  
 )  
CHICAGO HEIGHTS REFUSE DEPOT, ) AC 87-47  
INC. ) (IEPA No. 8383-AC)  
Respondent. ) Docket A

ORDER OF THE BOARD (by M. Nardulli):

On October 31, 1988, the Respondent, Chicago Heights Refuse Depot, Inc., filed a Reply and Objection to the Opinion and Order of the Board in this matter entered on September 22, 1988. Pursuant to 35 Ill. Adm. Code 103.240, any party has thirty-five days after the adoption of the final order to file a motion in reply. Failure of a party to appeal a final order within thirty-five days waives the party's right to review. In this case, the thirty-five days had elapsed before the reply was filed and therefore the Reply and Objection will not be accepted by the Board.

However, because the Respondent's Reply Brief was unintentionally overlooked in drafting the Opinion and Order, the Board will, on its own motion, address the issues presented in the Reply and Objection to clarify the record.

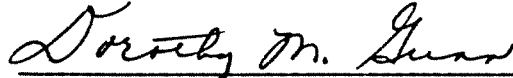
The Opinion and Order of September 22, 1988 stated that the Respondent failed to file a Response Brief in the matter. In fact, the Respondent's Reply Brief was filed on June 16, 1988. While the Opinion and Order were drafted without referring to the Reply Brief, the Board did review the remainder of the record in an effort to anticipate arguments that could be made by the Respondent. All of the points presented by the Respondent in the Response Brief were considered in formulating the Opinion and Order, and the Opinion and Order clearly states the reason for the Board's decision. There is nothing in the Reply Brief that would dissuade the Board from the Opinion and Order it has entered.

In the Reply and Objection, the Respondent also argues that circumstances beyond Respondent's control may have caused refuse to remain uncovered. This argument was not raised at hearing or in the Reply Brief and is therefore not properly introduced in a motion subsequent to entry of a final order. It shall also be noted that the Board addressed the possibility of an uncontrollable circumstance defense in the Opinion and Order and determined that the Respondent had failed to show that an uncontrollable circumstance existed.

The Motion is hereby denied.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the above Order was adopted on the 3<sup>rd</sup> day of November, 1988 by a vote of 6-0.



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Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board