

ILLINOIS POLLUTION CONTROL BOARD
January 10, 1985

THOMAS E. GREENLAND,)
)
 Complainant,)
)
 v.) PCB 84-155
)
 CITY OF LAKE FOREST,)
)
 Respondent.)

ORDER OF THE BOARD (by J. D. Dumelle):

The Complaint in this proceeding was filed with the Board on October 17, 1984. On December 14, 1984 the City of Lake Forest filed a Motion to Dismiss arguing that both the regulatory and statutory provisions which form the basis of the Complaint are invalid and that the Board has no authority to grant the relief requested. On January 4, 1985, the Complainant filed a Response to Respondent's Motion to Dismiss arguing that the Motion to Dismiss was untimely under Section 103.140 of the Rules of the Pollution Control Board (35 Ill. Adm. Code 103.140), that the regulatory and statutory provisions are valid, and that legal and factual issues remain with regard to the Board's authority to grant the relief requested.

Although Lake Forest's Motion to Dismiss was not filed within 14 days after receipt of the complaint as required by 35 Ill. Adm. Code 103.140, the Board will refrain from denying the Motion on this technical basis as the Board finds that the Motion to Dismiss on its merits does not require dismissal of this action.

We note that in a motion attacking the validity of a statute or regulation, the moving party bears the burden of demonstrating such invalidity. The Board is not persuaded by Respondent's arguments on such invalidity as made in this Motion. The Board also notes that in fashioning a remedy, it is not confined to the relief requested, therefore this is not a basis for dismissal. (See Ill. Rev. Stat. 1983. ch. 110, par. 2-617.)

The Board requests that both parties supplement their legal arguments at hearing.

The Motion to Dismiss is hereby denied.

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 10th day of January, 1985 by a vote of 5-0.

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