

ILLINOIS POLLUTION CONTROL BOARD  
November 29, 1988

CITY OF FARMINGTON, )  
 )  
 Petitioner, )  
 )  
 v. ) PCB 85-203  
 )  
 ILLINOIS ENVIRONMENTAL )  
 PROTECTION AGENCY, )  
 )  
 Respondent. )

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

This matter comes before the Board upon a September 9, 1988 Motion For Leave To File Agency Brief Instanter.

This action was initially a request for an extension of an earlier granted variance (PCB 84-166), which allowed sanitary sewer overflows during installation of bypasses. The request was docketed as PCB 85-203.

In approximately June of 1987 Petitioner and Respondent came to an agreement concerning a compliance plan. This agreement led to a favorable Agency Recommendation filed with the Board on July 6, 1987. However, on December 16, 1987 the Agency filed a Second Amended Agency Recommendation withdrawing its approval, claiming that Petitioner had reneged on its promise to adhere to the agreed upon compliance schedule.

Subsequently, Petitioner filed a new Petition For Variance and on March 21, 1988 Respondent filed its formal Agency Recommendation, urging the Board to deny the requested variance because, inter alia, "... their alternative compliance plan would not absolutely guarantee elimination of basement floodings..."

The matter went to hearing on July 28, 1988, and the Hearing Officer ordered briefs to be submitted simultaneously no later than two weeks after the Board's receipt of record of hearing transcripts.

On September 9, 1988, Respondent motioned for leave to file its brief, instanter, noting that Petitioner had (also) failed to file its brief within the time prescribed by the Hearing Officer. Respondent indicated that its motion and brief were submitted to the Hearing Officer (rather than opposing counsel) because a copy of the Respondent's brief was attached to the motion. Respondent requested that the Hearing Officer hold the

motion and brief until such time as Petitioner filed its brief so as to avoid giving Petitioner an advantage prior to submitting Petitioner's brief; the Hearing Officer order setting simultaneous brief deadlines obviously was intended to prevent this.

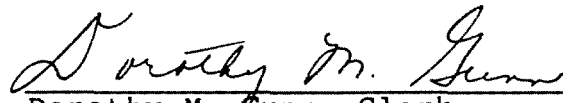
Because Petitioner never responded to Respondent's Motion For Leave To File, Instanter, an attorney for the Board telephoned counsel for Petitioner. Petitioner's counsel indicated surprise that he was not served with a copy of Respondent's motion and also was surprised to learn that hearing transcripts were available and had been available for approximately one month. Counsel for Petitioner was informed that a Response to respondent's motion should be filed post haste and that Respondent's brief (overdue at that time) should be submitted as soon as possible.

Since that date Petitioner has failed to respond to the Motion For Leave To File, Instanter and has not filed its hearing brief.

Respondent's Motion For Leave To File, Instanter, is granted. Petitioner is hereby ordered to submit Petitioner's brief no later than December 9, 1988. If Petitioner's brief is not submitted by December 9, 1988 this Board will review and consider appropriate sanctions (pursuant to 35 Ill. Adm. Code 107), including dismissal of this action with prejudice.

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 29<sup>th</sup> day of November 1988 by a vote of 7-0.

  
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Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board