

ILLINOIS POLLUTION CONTROL BOARD
August 1, 1994

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):

As directed in the Board's order of May 5, 1994, hearing is presently scheduled in this matter for August 3, 1994 at 11:00 a.m. in Colona, Illinois. On July 27, 1994, the parties filed a joint motion to waive hearing and to instead set only a briefing schedule on the issue of penalty. In support of this request, the motion recites:

The parties agree that sufficient factual evidence which is necessary for the determination of an appropriate civil penalty in this action is either contained in the record or will be submitted into the record within a short time period. The parties believe that a formal hearing on the issue of penalty is unnecessary and constitutes an unwarranted expenditure of the time and resources of the Board and of Complainant and Respondents. The parties believe that once all the factual information necessary for the determination of an appropriate penalty is submitted into the record, the parties can present their legal arguments in the form of written briefs.

The motion includes a suggested discovery, document submittal, and briefing schedule.

When the Board ordered this matter to hearing in May, it did so because the parties had clearly indicated their intent to supplement the record and had in fact begun submitting unsworn, unsupported factual material into the record. Although this

deficiency has been corrected by complainant's July 25 filing, the Board remains concerned that factual disputes will arise in conjunction with penalty issues. The Board's concern is hardly assuaged by the fact that the parties contemplate that more discovery will occur in this action.

To save the Board and its hearing officer needless expenditure of time and resources, the Board will grant the motion to cancel the August 3 hearing, and will establish the schedule suggested by the parties with some modifications. The Board will establish a discovery cut-off prior to the cut off date for filing all information and prior to the due date of complainant's brief, and will also provide that the parties must stipulate to entry of documents into the record. In the event that the parties cannot agree to entry of documents into the record, this matter will be set for hearing.


The parties shall adhere to the following schedule:

1. All discovery as to the factors set forth in Sections 33(c) and 42(h) of the Act must be completed on or before August 22, 1994.
2. All additional factual information, including but not limited to respondents' financial reports for the years 1985 through the present date, and compliance cost estimates prepared by Respondents' engineering consultant, must be submitted into the record on or before August 29, 1994. The parties must stipulate to the entry of all such information. In the event that the parties cannot agree to record entry of information, they shall inform the hearing officer who shall set the matter for hearing. In this eventuality, paragraphs 3-5 below are vacated, and the hearing officer directed to establish a post-hearing briefing schedule.
3. Complainant shall file its brief on or before September 29.
4. Respondents shall file their responsive brief on or before October 31, 1994.
5. Complainant shall file its reply, if any, on or before November 15, 1994.

IT IS SO ORDERED.

¹ Compliance Evaluation Inspection Report and Supporting Affidavit.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 12th day of August, 1994, by a vote of 4-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board