

ILLINOIS POLLUTION CONTROL BOARD  
July 11, 1991

ISRAEL-GEROLD'S, an Illinois )  
General Partnership, FIRST )  
NATIONAL BANK AND TRUST )  
f/k/a LA GRANGE STATE BANK, as )  
Trustee under Trust No. 1130 )  
LEARSI AND CO., INC., an )  
Illinois Corporation, )  
 )  
Petitioners, )  
 )  
v. ) PCB 91-108  
 ) (Underground Storage Tank Fund  
 ) Reimbursement Determination)  
ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
 )  
Respondent. )

ORDER OF THE BOARD (by J.C. Marlin):

On June 24, 1991, the Petitioner filed a Petition for Review of Underground Storage Tank Fund Reimbursement Determination. The Petition was accompanied by a Motion to Stay the proceeding. On July 2, 1991, the Board received a response in opposition from the Illinois Environmental Protection Agency (Agency).

The Petitioner is requesting a stay of the proceedings while waiting the outcome of an appeal in the Circuit Court. The appeal filed in the Circuit Court by Petitioner is of a decision by the State Fire Marshall that Petitioner's tanks are not eligible for registration. Petitioner asserts that the determination by the State Fire Marshall that the tanks could not be registered is an essential factor in determining the Petitioner's eligibility to access the underground storage tank reimbursement fund. Therefore, the Petitioner is requesting that the Board not proceed with this case until the Circuit Court has ruled.

In support of its contention that a stay should be denied, the Agency, citing to Big River Zinc Corporation v. IEPA, PCB 91-61 (May 6, 1991), correctly states that the Board has declined to issue discretionary stays without authority for doing so. However, the Petitioner in Big River Zinc was requesting a stay of a rule which had been properly adopted and was in effect, not a stay of the actual proceedings before the Board. The Board further stated in Big River Zinc that the Board has "inherent authority to a grant stay under certain circumstances." The Agency also cites to Moline Corporation v IEPA, PCB 89-78 (October 18, 1989) and Fansteel/Escast v. IEPA, PCB 89-31 (February 23, 1989) in support of its position that a stay should be denied. Both those cases are permit appeal cases where a stay was requested. In fact, in the Moline case, the Agency requested a stay in a joint motion. The Board denied the stay in Moline because a decision deadline was

approaching and no waiver was filed; however in Fansteel/Escast the Board granted the stay. In sum, none of these cases persuade the Board that a stay should be categorically denied.

In its June 24 motion, Petitioner stated that it would file all necessary waivers if the Board were to grant a stay. On July 9, 1991, Petitioner filed an unconditional 120 day waiver of the date for the filing of the Agency record in this matter and of the Board's decision deadline. As seventeen days of the Board's decision time period have elapsed since the filing of the petition, the Board hereby grants a stay of approximately 100 days, through October 15, 1991. In the event that additional waivers are filed in the future, the Hearing Officer is authorized to "stay" or postpone hearing in this matter consistent with the directives on pages 2 and 3 of this Order.

This matter is accepted for hearing.

Hearing must be scheduled within 14 days of expiration of the stay in this matter and completed within 60 days of expiration of the stay in this matter. The hearing officer shall inform the Clerk of the Board of the time and location of the hearing at least 40 days in advance of hearing so that public notice of hearing may be published. After hearing, the hearing officer shall submit an exhibit list, and all actual exhibits to the Board within 5 days of the hearing. Any briefing schedule shall provide for final filings as expeditiously as possible and in no event later than 70 days from the date of expiration of the stay in this matter.

If after appropriate consultation with the parties, the parties fail to provide an acceptable hearing date or if after an attempt the hearing officer is unable to consult with the parties, the hearing officer shall unilaterally set a hearing date in conformance with the schedule above. This schedule will only provide the Board a very short time period to deliberate and reach a decision before the due date. The hearing officer and the parties are encouraged to expedite this proceeding as much as possible.

Within 10 days of expiration of the stay, the Hearing Officer shall enter a Hearing Officer Scheduling Order governing completion of the record. That Order shall set a date certain for each aspect of the case including: briefing schedule, hearing date(s), completion of discovery (if necessary) and pre-hearing conference (if necessary). The Hearing Officer Scheduling Order may be modified by entry of a complete new scheduling order conforming with the time requirements below.

The hearing officer may extend this schedule only on a waiver of the decision deadline by the petitioner and only for the equivalent or fewer number of days that the decision deadline is waived. Such waivers must be provided in writing to the Clerk of

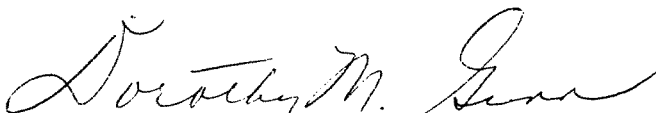
the Board. Any waiver must be an "open waiver" or a waiver of decision until a date certain.

Because of requirements regarding the publication of notice of hearing, no scheduled hearing may be canceled unless the petitioner provides an open waiver or a waiver to a date at least 120 days beyond the date of the motion to cancel hearing. This should allow ample time for the Board to republish notice of hearing and receive transcripts from the hearing before the due date. Any order by the hearing officer granting cancellation of hearing shall include a complete new scheduling order with a new hearing date at least 40 days in the future and at least 30 days prior to the new due date and the Clerk of the Board shall be promptly informed of the new schedule.

Because this proceeding is the type for which the Illinois Environmental Protection Act sets a very short statutory deadline for making a decision, absent a waiver, the Board will grant extensions or modifications only in unusual circumstances. Any such motion must set forth an alternative schedule for notice, hearing, and final submissions, as well as the deadline for decision, including response time to such a motion. However, no such motion shall negate the obligation of the hearing officer to establish a Scheduling Order pursuant to the requirements of this Order, and to adhere to that Order until modified.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, do hereby certify that the above Order was adopted on the 11<sup>th</sup> day of July, 1991, by a vote of 7-0.

  
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Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board