

ILLINOIS POLLUTION CONTROL BOARD
October 6, 1988

RIVERSIDE LABORATORIES,)	
)	
Petitioner,)	
)	
v.)	PCB 87-62
)	
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

DISSENTING OPINION (by M. Nardulli):

The Motion for Leave to File Instanter filed by the Attorney General Office in the above captioned case should be denied for failure to provide sufficient reason why the filing could not have been accomplished on time or why a prior request for extension of time could not have been filed. This motion is indicative of a troublesome, and seemingly increasing, trend in the practice before the Board to disregard the briefing schedule and assume that any motion to file instanter will automatically be granted by the Board. This practice of granting leave to file instanter, without requiring a showing of sufficient cause of delay, is a contributing factor to the Board's problems of controlling its docket and adjudicating matters in a timely manner.

In the present case, a briefing schedule was adopted, and agreed to by the Agency's attorney at the hearing on July 14, 1988. The schedule required the Agency to file its response brief by September 23, 1988. Instead the Agency's brief was filed on September 28, 1988 accompanied by a motion to file instanter. The Assistant Attorney General's only supporting reason for filing the brief five days late is that she was not at work on September 21, 1988. The explanation that the Board is asked to accept for late filing is that because the Assistant Attorney General missed one day of work during the eight week period allotted to prepare her brief, she is somehow justified to file the brief five days late. The Board's granting of this motion also requires it to ignore the fact the Assistant Attorney General probably was aware of the fact that she would be away from work on September 21 when she agreed to the briefing schedule and also requires the Board to not question why the moving party did not show the courtesy of filing a motion for extension of time before the brief was due.

This type of seemingly presumptuous and disrespectful attitude has become all too prevalent among practitioners before the Board. The Board must begin to realize the dangerous

precedence it could establish by allowing itself to be perceived as a rubber stamp for any motion to file instanter. The failure to require sufficient cause for late filing will make it increasingly difficult to deny late filings when it is necessary to do so to control and expedite our decision process.

I, therefore, respectfully dissent in this matter.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Dissenting Opinion was submitted on the 7th day of October, 1988.

Michael L. Nardulli
Michael L. Nardulli

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