

ILLINOIS POLLUTION CONTROL BOARD
July 20, 1995

ILLINOIS ENVIRONMENTAL,)	
PROTECTION AGENCY,)	
)	
Complainant,)	
)	
v.)	AC 95-22
)	(IEPA #169-95-AC)
)	(Administrative Citation)
CLAYTON G. POPE and)	
KAREN N. POPE,)	
)	
Respondents.)	

ORDER OF THE BOARD: (by J. Yi)

On March 23, 1995 the Illinois Environmental Protection Agency (Agency) filed this administrative citation against Clayton G. Pope and Karen N. Pope alleging violations of Section 21(p)(1) of the Environmental Protection Act (Act) (415 ILCS 5/21(p)(1)(1994).) Respondents did not file a Petition for Review with the Clerk of the Board within 35 days of the date of service as allowed by Section 31.1(d)(2) of the Act. Pursuant to Section 31.1(d)(1) of the Act, on May 4, 1995, the Board entered a Default Order finding the respondents in violation of the Section 21(p)(1) of the Act as alleged in the administrative citation.

On June 12, 1995 the respondents filed a motion to review and/or appeal the penalty and alleged wrongdoing described in the administrative citation. In support of the motion, the respondents state that they have tried to keep the property clean and that they are not running a dump on the property. Additionally, the respondents state that they have posted "no dumping" signs at the property and live 25 miles from the property so it is difficult to keep it clean. Furthermore, the respondents assert that they asked the person farming the property to watch out for this sort of thing and that it isn't fair to punish them for someone else's wrongdoing. The Agency has not responded as of the date of this order.

Section 41 of the Act and the Board procedural rules provide for an appeal of final orders of the Board within 35 days of the issuance of those orders. The Board entered the default order on May 4, 1995. Therefore this motion was to be filed on or before June 8, 1995. The Board received the motion, dated June 1, 1995, on June 12, 1995. Thus the motion was filed late.

Regardless of whether the Board accepts the late filing, the respondents have neither raised the defense of uncontrollable

circumstances nor denied that the alleged open dumping occurred on their property. The Board has held that the property owners are responsible for open dumping causing the occurrence of litter. (See, IEPA v. Omer Thomas, January 23, 1992 AC 89-215; IEPA v. A. J. Welin, PCB 80-125, May 13, 1982, 47 PCB 7; IEPA v. Village of Port Byron, PCB 72-67, October 24, 1982, 6 PCB 9; EPA v. Dobbeke et al., PCB 72-130, August 22, 1972, 5 PCB 219; EPA v. Village of Darnad, PCB 74-381, March 6, 1975, 16 PCB 13; and EPA v. Maney et al., PCB 79-262, August 31, 1980, 39 PCB 363. The Board has also found that the Act, by its terms, does not envision a properly issued administrative citation being dismissed or mitigated because a person is cooperative after its issuance or voluntarily cleans up the site. (See, IEPA v. Jack Wright, (August 30, 1990), AC 89-227, 114 PCB 863 and IEPA v. Dennis Grubaugh, (October 16, 1992), AC 92-3, 136 PCB 425.)

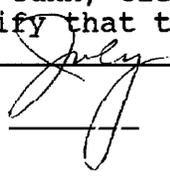
Additionally, the Board's authority to vacate a default order is limited by statute, which has built-in time constraints for the complainant, the respondent and this Board. Section 31.1(d)(1) states:

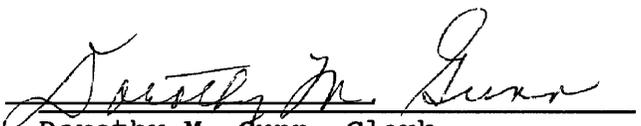
If the person named in the administrative citation fails to petition the Board for review within 35 days from the date of service, the Board shall adopt a final order, which shall include the administrative citation and findings of violation as alleged in the citation, and shall impose the penalty specified in subdivision (b)(4) of Section 42.

The respondents failed to respond to the Agency's "Administrative Warning Notice" issued July 15, 1994 and failed to respond to this administrative citation which was issued March 16, 1995 and received by respondents on March 22, 1995. The Board in this case, based on these facts, declines to exercise any authority it may have to vacate a default order after the statutory time to appeal the administrative citation has expired. The motion is 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 20th day of July, 1995, by a vote of 6-0.




 Dorothy M. Gunn, Clerk
 Illinois Pollution Control Board