

ILLINOIS POLLUTION CONTROL BOARD
May 19, 1994

SANGAMON COUNTY,)
)
 Complainant,)
) AC 94-15
 v.) (County No. SCDPH-94-AC-5)
) (Administrative Citation)
 ESG WATTS, INC.,)
 Respondent.)

ORDER OF THE BOARD (by C. A. Manning):

On May 5, 1994, the respondent, ESG Watts, Inc. (ESG) filed a motion to file petition for review instanter. Sangamon County filed the administrative citation against ESG on March 21, 1994. Pursuant to Section 31.1(d)(1) the Board entered a default order against ESG upholding the violation on May 5, 1994.

The administrative citation process, a creature of statute, 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.

Sangamon County served the administrative citation on ESG March 21, 1994. Having received no timely filed petition for review, the Board entered its default order on May 5, 1994.

In respondent's motion, which was filed on the same day that the Board entered its default, it states that although the administrative citations were received by the attorneys they were not pursued due to unforeseen and unavoidable circumstances. Respondent goes on to state that the responses were on the Respondent's attorney's legal secretary's desk, but she was stricken with an illness requiring urgent medical care and therefore the petition for review was not filed. For these reasons, the respondent requests the Board to allow it to file its petition for review instanter.

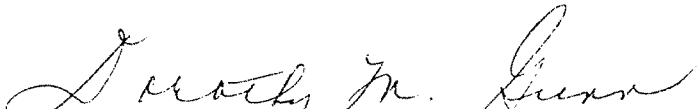
On May 10, 1994 complainant filed a response to the respondent's motion to file its petition for review instanter. Complainant states that the Act does not allow for the late filing of a petition for review. Moreover, complainant states that the affidavit supplied by the legal secretary does not

explain why Respondent's attorneys did not respond to the citation by the close of the statutory time period, in this case April 26, 1994.

The Courts have clearly held that "an administrative agency is a creature of statute, any power or authority claimed by it must find its source within the provisions of the statute by which it is created." (Bio-Medical Laboratories, Inc. v. Trainor, (1977), 370 N.E. 2d 223.) The statute creating the Board's authority to find violation through the administrative citation process, quite clearly states that the Board shall find a violation if the person named in the administrative citation does not file a petition for review within 35 days of service of the administrative citation. In this matter the 35 days had run and by operation of law respondent was found in violation. The Board finds no authority to allow respondent to file its petition for review in this matter after the 35 day period has run. The motion to file respondent's petition for review instanter 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 19th day of May, 1994, by a vote of 6-0.


 Dorothy M. Gunn, Clerk
 Illinois Pollution Control Board