

ILLINOIS POLLUTION CONTROL BOARD  
April 8, 1993

SANGAMON COUNTY, )  
 )  
 Petitioner, )  
 )  
 v. ) AC 92-77  
 ) (SCDPH-92-AC-19)  
 MCCABE PACKING COMPANY, ) (Administrative Citation)  
 )  
 Respondent. )

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

On November 4, 1992, Sangamon County filed an Administrative Citation ("AC") with the Board. The Environmental Protection Act ("Act") allows parties 35 days from the date of service to appeal the AC. (415 ILCS 5/31.1(b)(4)(1992).) McCabe did not file a petition for review within 35 days. On December 17, 1992, the Board entered a default order in this matter. On February 11, 1993, the parties filed a stipulated agreement with the Board. On February 25, 1993, the Board ordered the parties to abide by the December 17, 1992 default order since the stipulation was not timely filed as a motion for reconsideration. (See, 35 Ill. Adm. Code 101.246.)

On March 29, 1993, Sangamon County filed a motion for reconsideration of the Board's February 25, 1993 order. In its motion, Sangamon County states that the parties engaged in extensive negotiations to remedy the violations of the Act. (Mot. at 1.) In support of this argument, on April 1, 1993, Sangamon County filed copies of correspondence between itself and respondent. Additionally, Sangamon County argues that compliance with the Act and not punitive damages is the goal of enforcement proceedings under the act. (Mot. at 1.)

The Board notes that although the letters show that the parties began negotiation in November of 1992, no attempt was made to inform the Board that negotiations were in progress. Additionally, McCabe's letter to Sangamon dated December 8, 1992, acknowledges that the time to petition the Board for review of the AC expired on December 8, 1992.

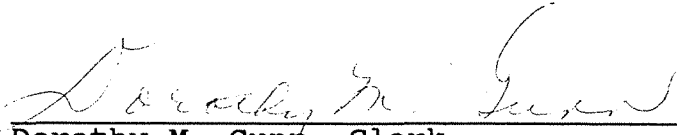
Moving to Sangamon's argument that compliance with the Act is the goal of enforcement proceedings, the Board notes that it has previously held that the statute does not provide for removal of the litter after the issuance of an AC as a reason to find no violation. Additionally, clean up of a site is not a mitigating factor under the AC program. (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, \_\_PCB\_\_.)

No petition for review was filed in this case and the motion for reconsideration of the Board's December 17, 1992 default order was not timely filed. Therefore, for the reasons stated above, Sangamon County's motion for reconsideration is denied.

The Board's December 17, 1992 default order is hereby modified to allow payment of the \$1,500.00 penalty within thirty days of today's order. The parties are to abide by the Board's December 17, 1992 default order as modified.

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 8<sup>th</sup> day of April, 1993, by a vote of 6-0.

  
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Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board