

ILLINOIS POLLUTION CONTROL BOARD  
March 25, 1993

SANGAMON COUNTY,	)	
	)	
Complainant,	)	
	)	
v.	)	AC 92-78
	)	Docket A & B
	)	(Administrative Citation)
	)	(SCDPH 92-AC-17)
	)	
PHILIP PENNINGTON,	)	
	)	
Respondent.	)	

ROBERT SMITH APPEARED ON BEHALF OF COMPLAINANT.

OPINION AND ORDER OF THE BOARD (by R.C. Flemal):

This matter is before the Board on a letter filed by respondent on February 16, 1993. The letter informs the Board that respondent missed the hearing scheduled for and held on February 8, 1993, and asks the Board to grant respondent another hearing in order for him to plead his case. (Letter at 1.) On February 25, 1993 the Board construed this letter as a motion to reschedule the hearing date. Also on February 25 the Board noted informational deficiencies and allowed for additional information to be filed by respondent and responses to be filed by complainant and the hearing officer. Such information was further ordered to be served on the parties and supported by affidavit.

On March 11, 1993 the Board received from the hearing officer a facsimile of a letter sent to the hearing officer by respondent. On March 15, 1993 respondent filed this letter with the Board, but has not supplied affidavits in support of the information given thus far, and has not indicated service on the parties and hearing officer.

The Board received the hearing officer's statement on March 8, 1993. On March 18, 1993 complainant filed its response to the motion to reschedule the hearing, with affidavits<sup>1</sup>. The response and hearing officer's statement indicate, among other things: that respondent failed to appear at hearing, that complainant attempted to contact respondent, that the hearing officer adjourned the hearing at approximately 1:20 p.m., that

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<sup>1</sup> The complainant's filing also does not include any proof of service on the respondent or hearing officer.

also at 1:20 p.m. complainant spoke with James Henricks<sup>2</sup> and informed him that "his secretary had forgotten to inform him of the hearing date" (Response at 4), that by the time Mr. Henricks arrived at the hearing location, the hearing had adjourned, and that respondent did not arrive at the hearing location until approximately 30 minutes after the hearing had adjourned. (Hearing Officer's Statement; Response at 1-4). At hearing, complainant moved that a default judgment issue against respondent for failure to appear. (Tr. at 3).

The Board finds that respondent has failed to adequately respond to the Board's February 25 order. Failure to timely file, with no service on the parties and accompanied by no affidavit according to the Board's procedural rules, makes this filing inadequate. In addition, respondent was specifically ordered to file affidavits in support of all his factual allegations and failed to do so. Due to these deficits, the Board denies respondent's motion to reschedule the hearing.

In addition, even if the Board were to find respondent's allegations true, the Board further finds the reasons given are inadequate to support grant of the motion to reschedule.

The motion to reschedule is denied. The Board proceeds to the merits of this matter.

Sangamon County alleges that on October 21, 1992 Philip Pennington, present owner or operator of a facility located in Sangamon County as an open dump, and commonly known to the Agency as Springfield/Pennington, violated Section 21(q)(1) of the Environmental Protection Act (415 ILCS 5/21(q)(1) (1992))<sup>3</sup>. The statutory penalty for this violation is \$500.00 pursuant to Section 42(b)(4) of the Act.

The Board finds that although respondent filed a petition for review, he failed to appear at hearing. The Board further finds, pursuant to Section 31.1(d)(2), that respondent presented no information to indicate that the violation occurred due to uncontrollable circumstances. Therefore, pursuant to Section 31.1(d)(2), the Board finds that Philip Pennington violated each and every provision alleged in the Administrative Citation. Since there is one such violation, the total penalty to be imposed is set at \$500.00.

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<sup>2</sup> Mr. Henricks states he is the Director of Environmental Health for the Sangamon County Department of Public Health. His office is in the same building as the hearing location.

<sup>3</sup> The Act was formerly codified at Ill.Rev.Stat. 1991, ch 111½, par. 1001 et seq.

Respondent is also required to pay hearing costs incurred by the Board and Sangamon County pursuant to Section 42(b)(4) of the Act. The Clerk of the Board and Sangamon County will therefore be ordered to file statements of costs, supported by affidavit, with the Board and with service upon respondent.

This opinion constitutes the Board's findings of fact and conclusions of law in this matter.

ORDER

1. It is hereby ordered that within 30 days of the date of this order, Philip Pennington shall, by certified check or money order payable to the Sangamon County Public Health Department, pay a penalty in the amount of \$500.00 which is to be sent to:

James D. Stone  
Director of Public Health  
Sangamon County Department of Public Health  
200 South Ninth Street  
Room 301  
Springfield, Illinois 62701

2. Respondent shall include the remittance form and write the case name and number and his social security or federal employer identification number on the certified check or money order.
3. Penalties unpaid after the date shall accrue interest pursuant to Section 42(g) of the Environmental Protection Act.
4. Docket A in this matter is hereby closed.
5. Within 30 days of this order, the Clerk of the Pollution Control Board and complainant Sangamon County shall file a statement of hearing costs, supported by affidavit and with service upon the respondent Philip Pennington. Such filings shall be entered in Docket B of this matter.
6. Respondent is hereby given leave to file a reply/objection to the filings as ordered in paragraph 5 of this order within 45 days of this order.

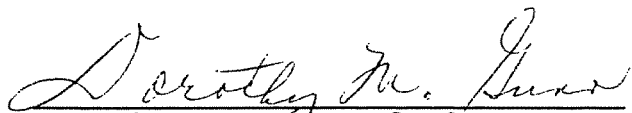
IT IS SO ORDERED.

Section 41 of the Environmental Protection Act, 415 ILCS 5/41 (1992), provides for appeal of final orders of the Board within 35 days. The Rules of the Supreme Court of Illinois establish filing requirements. (But see also 35 Ill. Adm. Code

0140-0285

101.246, Motions for Reconsideration, and Castenada v. Illinois Human Rights Commission (1989), 132 Ill.2d 304, 547 N.E.2d 437; Strube v. Illinois Pollution Control Board, No. 3-92-0468, slip op. at 4-5 (3d Dist. March 15, 1993).)

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above opinion and order was adopted on the 25<sup>th</sup> day of March, 1993, by a vote of 6-0.



Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board