

ILLINOIS POLLUTION CONTROL BOARD
May 21, 1992

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	
)	
v.)	AC 92-16
)	(IEPA No. 110-92-AC)
)	(Administrative Citation)
HAROLD HILLEBRENNER,)	
)	
Respondent.)	

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

On April 23, 1992, the Board issued a default order concerning this administrative citation issued by the Agency on March 3, 1992. As no petition for review had been filed on or before April 4, 1992,¹ the Board imposed a \$500.00 penalty for one violation of Section 21(p)(1) of the Act.

By letter dated April 30, 1992 but received by the Board May 4, 1992, Harold Hillebrenner seeks a "petition for review". Mr. Hillebrenner states that the matter was not taken care of immediately as he is "in very poor health and unable to get out of bed". He further states that he "would like to know exactly what has to be done to get this matter cleared up...in the least time".

Pursuant to the Board's Order of May 7, 1992 construing the letter as a motion to reconsider and vacate the default order the Agency filed a response in opposition on May 20, 1992. Materials submitted by the Agency reveal that this matter was referred to the Agency for action by the Adams County Health Department in May, 1990. Also, on May 7, 1990 the Health Department directed a letter to Mr. Hillebrenner asking him to provide the Health Department with information, as the Agency had started a tire removal program.

On December 7, 1990, the Agency inspected the property in response to the referral to determine eligibility for consensual removal of used tires. The inspection revealed the presence of over 500 tires in one slight ravine, and a quantity of old vending machines in another. The Agency inspector contacted Mr. Hillebrenner by phone on December 18, 1990 and advised him that "failure to remove the waste could result in possible enforcement actions and fines". The report states that Mr. Hillebrenner responded that "they'll have to take him to court in an ambulance".

¹This is 35 days from the February 29, 1992 date of service prescribed by Section 31.1(d)(2) of the Act.

The Agency issued an Administrative Warning Notice (AWN) on January 9, 1991, specifying the apparent violations and corrective action suggested, i.e. to remove and dispose of non-tire litter at a proper disposal site, and to participate in the Agency's tire removal program. The AWN specified that the corrective action should be completed within 60 days, by March 16, 1991 and noted that the area would be reinspected to determine compliance.

The Agency did not issue the administrative citation (AC) challenged in this case until January 9, 1992, based on the second inspection on January 6, 1992.

In response to Mr. Hillebrenner's motion, the Agency quotes from the Board's previous orders in cases of this type which explain the nature of a petition for review of an AC. The Agency then states that:

The Agency does not believe Petitioner would prevail at a hearing and would be liable for hearing costs.² The allegation of very poor health, even if proven, would not prevent Respondent from arranging for a third party to clean up and dispose of the non-tire litter. The Agency is able to pickup the tires through its tire removal program after the non-tire litter is properly disposed.

In conclusion, the Agency states that the Motion for Reconsideration should be denied and that the Respondent may get this matter cleared up in least time by paying the Administrative Citation, having the non-tire litter removed by a third party, and then sending the enclosed tire removal agreement back to the Agency.

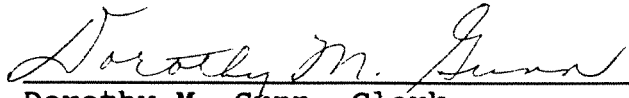
The Board finds that there is no reason to reopen this case for further consideration. The materials submitted by the Agency indicate that Mr. Hillebrenner has received clear directions on how to avoid the filing of this AC since the matter was brought to his attention some two years ago. The health problems described here are not the sort of "uncontrollable circumstance" which allows the Board to forgive payment of an AC fine.

The motion to reconsider and to vacate the order of April 23, 1992 is hereby denied. However, the Board grants an extension of the payment due date for 30 days after the date of this order. The \$500.00 fine must now be paid on or before June 21, 1992, in the manner specified in the Board's Order of April 23, 1992.

IT IS SO ORDERED.

²Hearing costs usually are between \$200.00 to \$1,000.00, and must be paid in addition to the penalty.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 21st day of May, 1992, by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board