

ILLINOIS POLLUTION CONTROL BOARD
March 22, 1990

THOMAS S. FREDETTE,)
)
 Complainant,)
)
 v.) PCB 89-61
) (Enforcement)
 VILLAGE OF BEECHER,)
)
 Respondent.)

ORDER OF THE BOARD (by J. Marlin):

This matter comes before the Board on Complainant's second Motion for Judgement by Default filed February 26, 1990. The motion asks that a default judgement be entered against Respondent Village of Beecher due to their repeated failures to comply with Hearing Officer Orders concerning discovery. For reasons given below, the motion is granted.

On April 5, 1989, Complainant filed an eight count Complaint against the Village which alleged, among other things, violations of contaminant discharge laws and regulations in the operation of the Village's municipal wastewater treatment plant. Elements of the violations concerned fecal coliform levels which exceeded legal standards, wastewater flows exceeding design average flow contained in the Village's NPDES permit, violations of total suspended solids limitations, concentrations of biochemical oxygen demand which were greater than permitted levels, reporting and operating violations, and air pollution. The Village responded to these allegations by filing a motion to dismiss the complaint. The Board denied the motion after hearing oral argument on the matter in its April 27, 1989 meeting. The Board found the matter neither duplicitous or frivolous as alleged by the Village.

On January 16, 1990, the Complainant filed his Motion for Judgement by Default due to Respondent's failure to comply with discovery. The Board denied that motion by Order dated February 8, 1990 due to procedural defects contained within it and advised the Complainant and the Hearing Officer of the manner in which the filing may be cured. On February 26, the Complainant filed his second motion for Judgement by Default which cured the deficiencies contained in his January 16, 1990 filing. The Hearing Officer followed with an Order Regarding Motion for Judgement by Default dated February 27, 1990 and filed with the Board March 1, 1990.

The Complainant's motion states that Interrogatories and a Request for Production of Documents were filed upon Respondent on

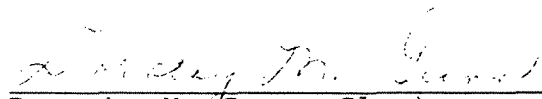
August 17, 1989 (Exh. A to Complainant's Motion). Thereafter, a Motion to Compel Compliance was filed with the Hearing Officer requesting that an Order be entered compelling responses to Complainant's discovery requests (Exh. B). The Hearing Officer entered an Order on December 13, 1989. The Order gave Respondent until December 26, 1989 to comply with it. When no responses were received, the Complainant filed his first Motion for Judgement by Default. The Hearing Officer's latest Order dated February 27, 1990 demanded that Respondent show cause why his Order of December 13, 1989 was ignored; re-ordered compliance with discovery requests by March 19, 1990; and, set forth the Hearing Officer's intention to issue findings regarding the Respondent's failures to comply should Respondent fail to answer by March 19, 1990. These were received by the Board on March 21, 1990. Once again, the Hearing Officer's Order went unheeded.

The Board noted in its Order dated February 8, 1990 regarding this matter that a party's failure to comply with a Hearing Officer's Order is a serious matter. The matter becomes "doubly serious" when these failures are repeated. In this the Board finds the Village of Beecher's continued insistence to ignore the clear directives of the Hearing Officer as sufficient to impose the remedy of default judgement. It appears nothing less will stir the Respondent from the course it has chosen -- that of contravening the authority vested in the Hearing Officer by the Board through adoption of its rules and by the Legislature through committee approval of those rules.

The Board hereby grants Complainant's second Motion for Judgement by Default upon the merits of this case. The Hearing Officer is directed to schedule a hearing to take evidence on the relief requested by the Complainant as to each of his claims.

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 second day of March, 1990, by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board