

ILLINOIS POLLUTION CONTROL BOARD
July 27, 1989

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
v.) AC 89-94
) (IEPA No. 9632-AC)
GUS RICHARDSON,)
)
Respondent.)

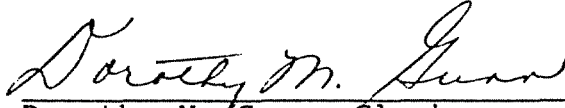
ORDER OF THE BOARD (by J. Marlin):

This matter comes before the Board on a Motion to Vacate Order and Dismiss Action filed on July 24, 1989 by complainant, Illinois Environmental Protection Agency (Agency). On May 12, 1989, an Administrative Citation was mailed to respondent certified mail, return receipt requested. The Agency never received proof of delivery, nor was the complaint package returned to the Agency. The Agency failed to notify the Board of its failure to obtain service. Consequently, on July 13, 1989, the Board entered a Default Order pursuant to section 31.1(d)(1) of the Illinois Environmental Protection Act (Act). (Ill. Rev. Stat. 1987, ch. 111 $\frac{1}{2}$, par. 1031.1(d)(1).) The Default Order was mailed by the Board to respondent, but was returned because of an incorrect zip code. At a meeting on July 20, 1989 between the Agency and respondent, it became apparent that respondent had no knowledge of this action.

The Board noted in In the Matter of: John R. Vander, AC 88-99 (March 9, 1989) that if the respondent in an Administrative Citation action has not had the opportunity to contest the citation pursuant to the provisions of the Act, modification of a section 31.1(d)(1) Default Order may be proper even though no timely Petition for Review has been filed. The instant cause falls within this limited exception. Complainant's Motion to Vacate the Board's Order of July 13, 1989 is hereby granted and this matter is dismissed.

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 27th day of July, 1989, by a vote of 6-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board