

ILLINOIS POLLUTION CONTROL BOARD  
November 17, 1988

IN THE MATTER OF: )  
 )  
J AND R LANDFILL, INC., ) PCB #AC 88-23  
 ) PCB #AC 88-34  
 Repondent. )  
 ) (88-3-SC-St. Clair Co.  
 ) (88-6-SC-St. Clair Co.  
 ) County Docket)

ORDER OF THE BOARD (by J. Anderson):

This matter comes before the Board on the Complainant's Consolidated Motion to Reconsider the Board's October 20, 1988, Order granting dismissal of this proceeding. The Motion to Reconsider was received by the Board on October 27, 1988. Respondent's response to the Motion to Reconsider was received by the Board on November 2, 1988. Insofar as the Complainant's motion raises an issue regarding whether the Complainant did, in fact, adequately respond to the Respondent's original Motion to Dismiss, the Complainant's Motion to Reconsider is granted.

As noted in the Board's Order of October 20, the Respondent alleged that Complainant failed to enclose, in its official service of the subject Administrative Citations, all of the information and documentation required to be included with such service pursuant to Section 31.1(b) of the Environmental Protection Act (Act). Such inclusion being mandatory and jurisdictional, the Board granted the Respondent's consolidated Motion to Dismiss, noting that Complainant had failed to respond to the motion.

Complainant alleges in the instant Motion for Reconsideration that it "did in fact respond at the hearing held in the above referenced matter at the St. Clair County Courthouse before the hearing officer, Todd Parkhurst, on September 28, 1988 within two (2) days of the date of certificate of service attached to said consolidated motion to dismiss". Complainant contends that it would be unjust for the Board to dismiss this action "on the basis that the Petitioner ... did not respond" to the motion to dismiss.

Two salient facts should be noted here. First, two hours after the Board's issuance of the dismissal Order of October 20, the Board received the transcripts of the September 28 hearing alluded to by Complainant. Second, that transcript (as Respondent notes in its response) discloses (pp. 6) that the

Complainant did in fact address the Consolidated Motion to Dismiss and that the Complainant acknowledged that copies of inspection reports had not been appended to the Administrative Citations served upon the Respondent.

The circumstances of this case amply illustrate the need for careful adherence to the Board's procedural rules, particularly with respect to actions involving administrative citations. Board rules clearly and unambiguously require that all motions to dismiss shall be directed to the Board, rather than to the Hearing Officer (35 Ill. Adm. Code 103.140(a)). Equally clearly, Board rules empower the Hearing Officer to rule upon virtually all motions except for motions to dismiss or strike (35 Ill. Adm. Code 103.140(e)). Additionally, Board rules require motions directed to the Board to be in writing (35 Ill. Adm. Code 103.140(b)) and require any party to file (as opposed to "present") any response to a motion to dismiss (35 Ill. Adm. Code 103.140(c)). The act of "filing" is governed by 35 Ill. Adm. Code 101.103, which recognizes only such submittals as are "addressed and mailed to or filed with the Clerk" of the Board (emphasis added). Unfortunately, Complainant in this matter failed to adhere to these technical requirements and thus cannot be said to have responded to the Motion to Dismiss.

This conclusion is not warranted solely on technical grounds. As noted, the transcript of the September 28 hearing did not reach the Board until after the Board had ruled on the motion. As a practical matter, a transcript would seldom be received before the passing of two or more weeks after the hearing. This would amount to a delay-generating practice that, if adopted by the Board, would seriously compromise its ability to expeditiously resolve disputes and meet statutory deadlines for decision. In the case of motions to dismiss, which are required to be disposed of "prior to hearing on the complaint" (35 Ill. Adm. Code 103.140(a)), such a practice would be legally impermissible as well. Finally, since this is an action upon an administrative citation rather than an "ordinary" enforcement action, the requirements relating to filing of motions as well as the requirements relating to service must be construed consistently with the obvious legislative intent to facilitate more speedy administrative citation proceedings.

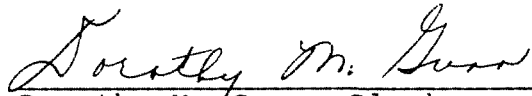
One last point: It should be understood that the Consolidated Motion to Dismiss was granted, not because Complainant failed to properly respond to the motion, but because Complainant failed to properly serve the administrative citations upon the Respondent, thus depriving the Board of jurisdiction. The Board's remarks concerning the Complainant's failure to respond to the motion related primarily to the reliance placed by the Board upon factual assertions and legal conclusions made by the Respondent in its motion. As noted above, the transcript of the September 28 hearing merely confirms the fact that the

Administrative Citations were not accompanied by copies of the inspection reports when served on the Respondent.

For the foregoing reasons, the Board's Order of October 20, 1988, dismissing these consolidated proceedings with prejudice is reaffirmed.

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 17<sup>th</sup> day of November, 1988, by a vote of 7-0.

  
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Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board