ILLINOIS POLLUTION CONTROL BOARD December 7, 2000

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
V.)
)
AMERICAN DISPOSAL COMPANY and)
CONSOLIDATED RAIL CORPORATION,)
)
Respondents.)
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PCB 00-67 (Enforcement - RCRA)

ORDER OF THE BOARD (by C.A. Manning):

On November 27, 2000, the People of the State of Illinois (complainant) filed a motion for default and judgment against respondent American Disposal Company (American).

On October 7, 1999, complainant filed a complaint against American alleging open dumping in violation of Section 21(a) of the Environmental Protection Act (Act) (415 ILCS 5/21(a) (1998)). On November 2, 1999, the complaint was personally served upon American. Comp. Exh. A. Subsequent to personal service of process upon American, American vacated the property at which complainant achieved personal service of process. American left no forwarding address with the U.S. Postal Service. Pursuant to hearing officer order, on September 26, 2000, complainant filed notice of service by publication. Comp. Exh. B. To date, American has remained on the service list and complainant has sent all filings to American's last known address. All such filings sent to American's last known address were returned unopened. Complainant therefore concludes that, since American has neither filed an appearance in this matter or filed an answer to the complaint, American has defaulted and the complainant is accordingly entitled to entry of judgment in their favor.

Failure to respond to a complaint results in allegations being deemed denied, not admitted, under 35 Ill. Adm. Code 103.122(d). The Board's procedural rules only provide for the entry of a default order for the failure of a party to appear at a hearing or for the failure to proceed as ordered by the Board. See 35 Ill. Adm. Code 103.220; see also <u>Turner v. Edmiston</u> (February 27, 1992), PCB 91-147 (default order entered where respondent was served with the complaint, but failed to appear at hearing). Because neither circumstance is presented here, the Board denies complainant's motion.

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 7th day of December 2000 by a vote of 7-0.

Dorothy Mr. Juni

Dorothy M. Gunn, Clerk Illinois Pollution Control Board