

ILLINOIS POLLUTION CONTROL BOARD
September 5, 2002

LANNIS WALTERS d/b/a FAT BOY)	
PIZZA (GET & GO),)	
)	
Petitioner,)	
)	
v.)	PCB 01-39
)	(UST Fund)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

ORDER OF THE BOARD (by T.E. Johnson):

This matter is before the Board on an August 6, 2002 motion to dismiss filed by the Illinois Environmental Protection Agency (Agency). To date, no response to the motion has been filed.

On October 20, 2002, the petitioner, Lannis Walters d/b/a Fat Boy Pizza (Get & Go) (hereinafter "Fat Boy") filed a petition for review of the Agency's July 19, 2000 final decision regarding a facility located at 2108 East Fifth Street, Metropolis, Massac County. In the petition, Fat Boy argued that the Agency decision was arbitrary, capricious and without statutory authority. Counsel for Fat Boy filed a notice of withdrawal on April 29, 2002. Since that time, no other attorney has entered an appearance on Fat Boy's behalf.

In its motion, the Agency asserts that attempts by the Agency and the Board's hearing officer to reach Fat Boy have been unsuccessful. The Agency contends that Fat Boy has failed to participated in scheduled conference calls and has not contacted the hearing officer as directed. The Agency argues that Fat Boy has been non-responsive to the hearing officer, and has not made any overtures to the Agency. Thus, asserts the Agency, because no party is proceeding on Fat Boy's behalf, there is no purpose in keeping this docket active and the case should be dismissed.

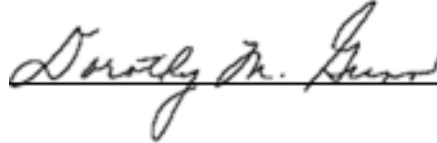
Pursuant to Section 101.500(d) of the Board's procedural rules, if no response to a motion is filed within 14 days after service, the party will be deemed to have waived objection but the waiver does not bind the Board in its disposition of the motion. *See* 35 Ill. Adm. Code 101.500(d). Hearing Officer Stephen Langhoff notes in a July 8, 2002 hearing officer order that Fat Boy has not had contact with the Board or the Agency since April 29, 2002.

This failure to participate in the Board's process is troubling. However, dismissal of Fat Boy's petition for review is a final disposition and Fat Boy will be given one last

opportunity to appear. Accordingly, the Board will reserve judgment on the Agency's motion to dismiss. Fat Boy is directed to contact the Hearing Officer Langhoff on or before September 30, 2002. The Board will rule on motion to dismiss after September 30, 2002.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on September 5, 2002, by a vote of 7-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", is written over a horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board