

ILLINOIS POLLUTION CONTROL BOARD
November 6, 2003

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB 98-148
)	(Enforcement -Land
DOREN POLAND, LLOYD YOHO, and)	
BRIGGS INDUSTRIES, INC. a/k/a BRIGGS)	
PLUMBING PRODUCTS, INC.,)	
)	
Respondents.)	
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BRIGGS INDUSTRIES, INC.,)	
)	
Third-Party Complainant,)	
)	
v.)	PCB 98-148
)	(Citizens Enforcement - Land)
)	(Third-Party Complaint)
LOREN WEST and ABINGDON SALVAGE)	
COMPANY, INC.,)	
)	
Respondents.)	

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

This matter is before the Board on a motion for relief from an August 7, 2003 Board order filed by Briggs Industries, Inc., a/k/a Briggs Plumbing Products, Inc. (Briggs) on September 29, 2003. The motion was filed pursuant to Section 101.904(a) of the Board's procedural regulations. 35 Ill. Adm. Code 101.904(a). The August 7, 2003 order concerns a three-count complaint filed by the Illinois Attorney General, on behalf of the People of the State of Illinois (complainant), and at the request of the Illinois Environmental Protection Agency (Agency), against Doren Poland (Poland), Lloyd Yoho (Yoho), and Briggs. The complaint alleges various violations of the Environmental Protection Act (Act) (415 ILCS 5/1 *et seq.* (2002)) and Board regulations related to respondents' operation of a permitted landfill (old landfill) and an unpermitted site (new landfill), both of which are located in Knox County, Illinois.

On August 7, 2003, the Board imposed a civil penalty of \$5,000 on Poland, Yoho and Briggs, but awarded no attorney's fees to the complainant. *See Poland*, PCB 98-148 (Aug. 7, 2003) slip op. at 14.¹ The respondents were held jointly liable for the required remediation. *Id.*

In its motion, Briggs asserts that the August 7, 2003 order was not served on the respondents or on Briggs' counsel. Mot. at 1. Briggs argues that the respondents were prejudiced by not having been served with the August 7, 2003 order because the penalty due date passed before their receipt of the order. Mot. at 2. Briggs requests that the order be modified to extend the time for payment of penalties. *Id.* The complainant has filed no response to this motion.

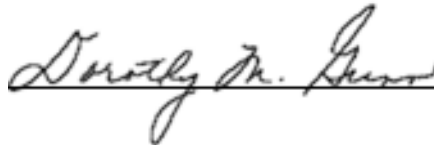
Section 101.904(a) of the Board's rules allows the Board to correct errors in orders or other parts of the record and errors therein arising from oversight or omission upon the Board's motion or the motion of any party. 35 Ill. Adm. Code 101.904(a). Briggs asserts that the respondents did not receive service of the Board's August 7, 2003 order. While not necessarily the result of a Board error or omission, this lack of receipt of the Board's August 7, 2003 order resulted in prejudice to the respondents.

As noted, the complainant did not respond to the motion. If a party files no response to a motion within 14 days the party will be deemed to have waived objection to the granting of the motion. *See* 35 Ill. Adm. Code 101.500(d).

The Board grants Briggs' motion as follows: the August 7, 2003 order is modified to provide that all penalties must be paid on or before November 13, 2003 – seven days from the date of this order. As the respondents have all received notice of the August 7, 2003 order, this should allow sufficient time to pay the penalty.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on November 6, 2003, by a vote of 6-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board

¹ The Board had previously found Poland, Yoho and Briggs in violation of Sections 21(a), (d), (e), and (p)(1) of the Act (415 ILCS 5/21(a),(d),(e),(p)(1) (2002)) and 35 Ill. Adm. Code 807.201, 807.202(a), and 812.101, and had remanded the matter for further hearings and the appropriate technical relief, penalty and attorney fees. *See Poland*, PCB 98-148 slip op. at 15 (Sept. 6, 2001).