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APR 06 2005

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

STATE OF ILLINOIS
Pollution Control Board

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
v.)
)
LANDERS' CHILDREN FAMILY, LLC,)
and RAY LANDERS,)
)
Respondents.)

AC 05-49

(IEPA No. 685-04-AC)

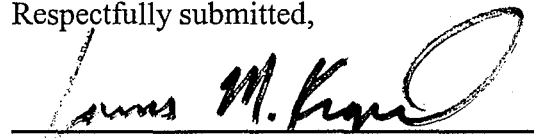
NOTICE OF FILING

To: Ray Landers
5000 Dickey John Road
Auburn, Illinois 62615

Landers' Children Family, LLC
Jennifer R. Chance, Reg. Agent and Mgr.
200 North Street
Auburn, Illinois 62615

PLEASE TAKE NOTICE that on this date I mailed for filing with the Clerk of the Pollution Control Board of the State of Illinois the following instrument(s) entitled MOTION FOR RECONSIDERATION AND MOTION FOR DEFAULT JUDGMENT AS TO RESPONDENT RAY LANDERS.

Respectfully submitted,



James M. Kropid
Special Assistant Attorney General

Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
(217) 782-5544

Dated: March 25, 2005

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STATE OF ILLINOIS
Pollution Control Board

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,)	
Complainant,)	
v.)	AC 05-49
)	(IEPA No. 685-04-AC)
LANDERS' CHILDREN FAMILY, LLC,)	(Administrative Citation)
and)	
RAY LANDERS,)	
Respondents.)	

MOTION FOR RECONSIDERATION
AND MOTION FOR DEFAULT JUDGMENT
AS TO RESPONDENT RAY LANDERS

NOW COMES the Complainant, the Illinois Environmental Protection Agency ("Illinois EPA"), by one of its attorneys, James M. Kropid, Assistant Counsel and Special Assistant Attorney General, and, pursuant to 35 Ill. Adm. Code 101.500 and 101.520, and by motion filed no later than 35 days following the receipt of an order entered by the Illinois Pollution Control Board ("Board") on March 3, 2005, hereby respectfully moves the Board to reconsider that order in that the Board erred in its decision. The Illinois EPA received service of the Board's order on March 8, 2005. In support of this motion, the Illinois EPA states as follows:

Motion for Reconsideration

(1) The purpose of a motion for reconsideration is to bring to the court's or Board's attention newly-discovered evidence which was not available at the time of the hearing, changes in the law, or errors in the court's or Board's previous application of the existing law. Mineral Solutions, Inc. v. Illinois Environmental Protection Agency, PCB 03-39 (April 3, 2003), citing Korogluyan v. Chicago Title & Trust Co., 213 Ill. App. 3d 622, 572 N.E.2d 1154 (1st Dist. 1992).

(2) On January 28, 2005, the Illinois EPA issued an Administrative Citation (“AC”) to two separate and distinct Respondents, Ray Landers and Landers’ Children Family, LLC, based on an inspection conducted on December 1, 2004.

(3) All service attempts on Respondent, Landers’ Children Family, LLC, were unsuccessful.

(4) Because Landers’ Children Family, LLC was not timely served within 60 days as required by 415 ILCS 5/31.1(b), the Illinois EPA, on February 18, 2005, filed a Motion to Dismiss the Administrative Citation as to Respondent Landers’ Children Family, LLC.

(5) On March 3, 2005, the Board issued an Order dismissing the Administrative Citation for lack of timely service on Respondents within 60 days of the observed violations.

(6) The Illinois EPA argues that specific factual circumstances exist to show that the Board’s March 3, 2005, decision was in error.

(7) The Illinois EPA filed the Motion to Dismiss to dismiss the AC against only one Respondent, Landers’ Children Family, LLC.

(8) The prayer for relief specifically requested that the Board “dismiss the pending action against Landers’ Children Family, LLC.”

(9) The Motion to Dismiss filed on February 18, 2005, did not mention Respondent Ray Landers and did not state that timely service had not been made on Ray Landers.

(10) Respondent Ray Landers was in fact served on January 28, 2005, and the Illinois EPA filed proof of service on Ray Landers on February 7, 2005.

(11) The Board’s decision in its March 3, 2005, order was in error because the specific relief prayed for in the Illinois EPA’s Motion to Dismiss was for dismissal of the pending

Administrative Citation action against Respondent Landers' Children Family, LLC, and not Respondent Ray Landers. Furthermore, proof of timely service with regard to Respondent Ray Landers has been filed.

Motion for Default as to Respondent Ray Landers

(12) On January 28, 2005, the Illinois EPA issued an Administrative Citation ("AC") to Respondent, Ray Landers, based on an inspection conducted on December 1, 2004.

(13) On January 28, 2005, service was made on Respondent, Ray Landers, an individual.

(14) Pursuant to 415 ILCS 5/31.1(d) and 35 Ill. Adm. Code 108.204(b), a petition for review was required to be filed in this matter by March 4, 2005.

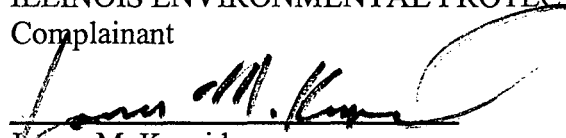
(15) Respondent Ray Landers has not filed a petition for review to contest the Administrative Citation.

(16) Because a petition for review has not been filed in a timely manner, pursuant to 415 ILCS 5/31.1(d)(1), a final order against Respondent Ray Landers including the finding of violations as alleged in the Administrative Citation and the penalty specified in 415 ILCS 5/42(b) is required.

WHEREFORE, the Illinois EPA, for the aforementioned reasons, respectfully requests the Board to reconsider its March 3, 2005, decision in this matter dismissing the Administrative Citation against Respondent Ray Landers and to find Respondent Ray Landers in default and issue a final order against this Respondent including the finding of violations as alleged in the Administrative Citation and the penalty specified therein.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,
Complainant



James M. Kropid
Assistant Counsel
Special Assistant Attorney General
Division of Legal Counsel
1021 North Grand Avenue, East
P.O. Box 19276
Springfield, Illinois 62794-9276
217/782-5544
217/782-9143 (TDD)
Dated: March 25, 2005

This filing submitted on recycled paper.

PROOF OF SERVICE

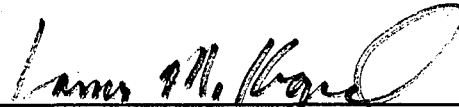
I hereby certify that I did on the 25th day of March, 2005, send by U.S. Mail with postage thereon fully prepaid, by depositing in a United States Post Office Box a true and correct copy of the following instrument(s) entitled MOTION FOR RECONSIDERATION AND MOTION FOR DEFAULT JUDGMENT AS TO RESPONDENT RAY LANDERS

To: Ray Landers
5000 Dickey John Road
Auburn, Illinois 62615

Landers' Children Family, LLC
Jennifer R. Chance, Reg. Agent and Mgr.
200 North Street
Auburn, Illinois 62615

and the original and nine (9) true and correct copies of the same foregoing instruments on the same date by U.S. Mail with postage thereon fully prepaid

To: Dorothy Gunn, Clerk
Pollution Control Board
James R. Thompson Center
100 West Randolph Street, Suite 11-500
Chicago, Illinois 60601


James M. Kropid
Special Assistant Attorney General

Illinois Environmental Protection Agency
1021 North Grand Avenue East
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