

ILLINOIS POLLUTION CONTROL BOARD  
September 28, 1989

ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
 )  
Complainant, )  
 )  
v. ) AC 89-132  
 ) IEPA No. 9712-AC  
 ) (Administrative Citation)  
 )  
RAY SCHROEDER, )  
 )  
Respondent. )

ORDER OF THE BOARD (by J. Marlin):

This matter comes before the Board upon a motion to vacate filed by the respondent on September 11, 1989. Respondent requests that the Board vacate its Order of July 27, 1989. That order found the respondent to be in violation of Section 21(q)(1) of the Environmental Protection Act ("Act") for causing or allowing open dumping which resulted in litter at the respondent's dump site in Woodford County.

The administrative citation was filed by the Illinois Environmental Protection Agency ("Agency") on June 28, 1989. The respondent did not file a petition for review with the Board within the 35 day statutory deadline. Therefore, the Board issued the Order on July 27, 1989 finding the respondent in violation of Section 21(q)(1) of the Act.

In respondent's motion to vacate, respondent states that he filed a petition for review on June 23, 1989. This petition was not filed with the Board. Respondent also states that sometime after July 5, 1989 he filed a petition for review. Whether there were one or two petitions for review, none were filed with the Board either within the 35 day statutory deadline or up until the filing of this motion to vacate.

Both the Act and the administrative citation issued to the respondent clearly state that the respondent may appeal an administrative citation by filing a petition for review with this Board within 35 days of service of the citation upon the respondent. Both the Act and the citation also state that if the respondent does not file a petition for review within 35 days then the Board will enter a default judgment. The administrative citation issued to the respondent states in pertinent part:

You have the right to contest this Administrative Citation. See Ill. Rev. Stat. 1987, ch. 111 $\frac{1}{2}$ , par.

1031.1. If you elect to contest this Administrative Citation, you must file a Petition for Review with the Clerk of the Illinois Pollution Control Board. A copy of the Petition for Review should be filed with the Illinois Environmental Protection Agency. Such Petition for Review must be filed within thirty-five (35) days of the date of service of this Administrative Citation, or a default judgment shall be entered by the Pollution Control Board. The Petition for Review may be filed with the Clerk of the Illinois Pollution Control Board at the State of Illinois Center, 100 W. Randolph, Suite 11-500, Chicago, Illinois 60601; and, a copy of said Petition for Review filed with the Illinois Environmental Protection Agency. (AC 89-132 at 3).

Section 31.1 of the Act similarly states in pertinent part:

If the person named in the administrative citation fails to petition the Board for review within 35 days from the date of service, the Board shall adopt a final order, which shall include the administrative citation and findings of violation as alleged in the citation, and shall impose the penalty specified in subdivision (b)(4) of Section 42.

Ill. Rev. Stat. ch. 111 $\frac{1}{2}$ , par. 1031.1(d)(1). (Also see In re: John Vander, AC 88-99, March 9, 1989).

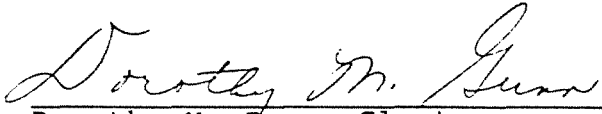
The respondent was given the opportunity to contest this administrative citation by filing a petition for review with the Board on or before July 21, 1989. The respondent never filed a petition for review with the Board and the Board subsequently issued a default Order on July 27, 1989. The respondent's motion to vacate is hereby denied. The Board will allow the respondent an additional 35 days from the date of this order to comply with the Board's July 27, 1989 order.

Section 41 of the Environmental Protection Act, Ill. Rev. Stat. 1987, ch. 111 $\frac{1}{2}$ , par. 1041, provides for appeal of Final Orders of the Board within 35 days.. The Rules of the Supreme Court of Illinois establish filing requirements.

IT IS SO ORDERED.

Board Member J. Anderson concurred.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 28<sup>th</sup> day of September, 1989, by a vote of 6-0.

  
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Dorothy M. Gunn, Clerk,  
Illinois Pollution Control Board