

ILLINOIS POLLUTION CONTROL BOARD  
March 16, 2000

COUNTY OF SANGAMON, )  
)  
Complainant, )  
)  
v. ) AC 00-33  
) (SCDPH 99-AC-21)  
AMERICAN TREE SERVICE, ROY F. ) (Administrative Citation)  
THROOP, )  
)  
Respondent. )

ORDER OF THE BOARD (by N.J. Melas):

On January 31, 2000, respondent American Tree Service, Roy F. Throop timely filed a motion for reconsideration with the Board. In the motion for reconsideration, respondent requests that the Board vacate the January 20, 2000 order in this matter. Complainant, the County of Sangamon, has not objected to the motion for reconsideration. The Board grants the motion for reconsideration.

BACKGROUND

In the January 20 order, the Board determined that respondent failed to petition the Board for review of the administrative citation within 35 days from the date of service. See County of Sangamon v. American Tree Service, Roy F. Throop (January 20, 2000), AC 00-33. According to the pleadings that the Board had on January 20, it appeared that complainant served respondent with the administrative citation on October 28, 1999. Section 31.1(d) of the Environmental Protection Act (Act) provides respondent 35 days to petition the Board for review. 415 ILCS 5/31.1(d) (1998). The 35-day deadline was December 2, 1999. Respondent did not petition the Board for review until December 15, 1999.

As a result, in the January 20 order the Board held that it did not have jurisdiction to accept this matter for hearing, and the Board also vacated its January 6, 2000 order which accepted this matter for hearing. See 415 ILCS 5/31.1(d) (1998); County of Sangamon v. American Tree Service, Roy F. Throop (January 6, 2000), AC 00-33. Also in the January 20 order, the Board found that respondent violated Section 21(p)(3) of the Act as alleged in complainant's October 27, 1999 administrative citation. See 415 ILCS 5/21(p)(3), 31.1(d) (1998).

DISCUSSION

Respondent states that the parties stipulated that respondent was served with the administrative citation sometime between November 10, 1999, and November 16, 1999. This stipulation is reflected in the text of the motion for reconsideration and in a December 10, 1999 letter that respondent sent to complainant. The letter is attached to the motion for reconsideration as Exhibit A.

As a result, even if respondent was served with the administrative citation as early as November 10, 1999, the Board finds that respondent filed the December 15, 1999 petition for review within the 35 day timeframe set forth in Section 31.1(d) of the Act.

### CONCLUSION

The Board grants the motion for reconsideration. The Board also reinstates the January 6, 2000 order in this matter and vacates the January 20, 2000 order in this matter. The Board directs that this matter proceed to hearing as expeditiously as practicable. The assigned hearing officer must set the matter for hearing in accordance with the requirements of the Act and the Board's procedural rules.

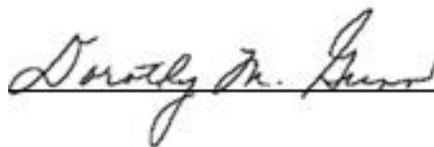
### ORDER

1. The Board grants respondent's motion for reconsideration.
2. The Board vacates its January 20, 2000 order in this matter. See County of Sangamon v. American Tree Service, Roy F. Throop (January 20, 2000), AC 00-33.
3. The Board reinstates its January 6, 2000 order in this matter. See County of Sangamon v. American Tree Service, Roy F. Throop (January 6, 2000), AC 00-33.
4. The Board directs that this matter proceed to hearing as expeditiously as practicable.

IT IS SO ORDERED.

Board Member E.Z. Kezelis abstained.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 16th day of March 2000 by a vote of 4-0.



Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board