

ILLINOIS POLLUTION CONTROL BOARD  
January 19, 1995

ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
 )  
Complainant, )  
 )  
v. ) AC 94-67  
 ) (IEPA No. 396-94-AC)  
 ) (Administrative Citation)  
 )  
KIRK DANA, )  
 )  
Respondent. )

ORDER OF THE BOARD (by C. A. Manning):

On August 8, 1994, complainant Illinois Environmental Protection Agency (Agency) filed an administrative citation against respondent Mr. Kirk Dana. The Agency alleged that Mr. Dana had violated Section 21(p)(1) of the Environmental Protection Act (Act) by causing and allowing litter. (415 ILCS 5/21(p)(1) (1992).) On September 15, 1994 the Board entered a default order against Mr. Dana finding him in violation and imposed a \$500.00 penalty pursuant to Section 31.1(d)(1) of the Act. (415 ILCS 5/31.1(d)(1) (1992).)<sup>1</sup>

On October 11, 1994 Mr. Dana sent a letter to the Board requesting that the Board reconsider the administrative citation issued by the Agency. Since Mr. Dana failed to file a timely appeal pursuant to Section 31.1 of the Act the Board construed this letter as a timely filed motion for reconsideration of our September 15, 1994 default order and directed the Clerk of the Board to serve a copy of Mr. Dana's letter on the Agency in order for it to respond.

Mr. Dana states in this letter that a tire shredding business does not exist at the site and that the tires have been picked up. Furthermore, Mr. Dana states that the building at the address is a private building and questions why he is still being

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<sup>1</sup>Section 31.1(d)(1) of the Act states:

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.

inspected since tires have not been accepted for at least 8 to 12 months.

On December 27, 1994 the Agency responded to Mr. Dana's request for a motion for reconsideration. The Agency argues that the Board should deny the motion. In support of its position the Agency argues that the Board, pursuant to 35 Ill. Adm. Code Section 101.246(d), is to consider factors including, but not limited to, error in the decision and facts in the record which were overlooked when deciding a motion for reconsideration. The Agency concludes that there was no error in the law of the decision and that there were no facts in the record which were overlooked when we issued the September 15, 1994 default order. Therefore, the Agency believes that the motion should be denied. The Agency also reiterates all the facts in support of its issuance of the citation and finds no reason to invalidate the default order which was properly issued pursuant to Section 31.1(d)(1) of the Act.

Pursuant to the Board's procedural rule at 35 Ill. Adm. Code Section 101.246(d), we find that Mr. Dana has failed to provide the Board with any new facts or state an error in the decision in which a grant of the motion for reconsideration would be proper. Therefore, for these reasons the Board denies Mr. Dana's motion for reconsideration.

1. It is hereby ordered that, unless the penalty has already been paid, within 30 days of the date of this order Kirk Dana shall, by certified check or money order payable to the Illinois Environmental Protection Trust Fund, pay a penalty in the amount of \$500.00, which is to be sent to:

Fiscal Services  
Illinois Environmental Protection Agency  
2200 Churchill Road, P. O. Box 19276  
Springfield, Illinois 62794-9276

2. Respondent shall include the remittance form and write the case name and number and his social security or federal Employer Identification Number on the certified check or money order.
3. Penalties unpaid after the due date shall accrue interest pursuant to Section 42(g) of the Illinois Environmental Protection Act.
4. Payment of this penalty does not prevent future prosecution if the violation continues.

IT IS SO ORDERED.

Board Member Joseph Yi abstained.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 19<sup>th</sup> day of January, 1995, by a vote of 5-0.

Dorothy M. Gunn  
Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board