

ILLINOIS POLLUTION CONTROL BOARD
September 17, 1992

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
..) AC 92-47
) (IEPA Docket No. 300-92-AC)
) (Administrative Citation)
)
DONALD SICKLES,)
)
Respondent.)

ORDER OF THE BOARD (by J.C. Marlin):

On July 30, 1992, the Board entered a default order in this matter. On August 10, 1992, respondent filed a handwritten letter which stated, in its entirety:

In re your letter (certified) received August 3, 1992, I do not feel that I owe any fine. I was not at home (on the premises) at the time the alleged burning of tires took place. I have proof of my whereabouts on that evening. All the tires have been clean up. I did not burn any tires on my property then or in the past years. Therefore, I do not feel that I owe the \$500.00 fine. Thank you.

Pursuant to the Board's order of August 13, 1992 construing this letter as a motion to reconsider and to vacate the default order. The Agency filed a response on August 28, 1992.

The Agency's response notes the history of inspection and reinspection of the site beginning April 15, 1991 and resulting in issuance of this and a prior administrative citation (AC) (AC 91-59, February 6, 1992). The Agency notes that standard information on appeal opportunities was contained in each AC, and that counsel explained these opportunities on one occasion.

The Agency goes on to address the two bases presented for reconsideration, by stating in response:

- a. "I did not burn any tires".

The Agency did not charge Mr. Sickles with open burning in violation of §21p(3). Our inspectors did not have a direct observation of the open burning and were advised that the County intended to pursue its own prosecution. The Administrative Citations were issued for §21q(1) and §21p(1),

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causing or allowing open dumping resulting in litter at the dump site.

b. "The site is cleaned up".

The Board has previously held that post citation activities of the citation recipient are not material to the Board's review pursuant to §31.1(d)(2) of the Act. (In the matter of: Lincoln Chamber of Commerce, AC 89-26, IEPA No. 9417-AC, Order of May 25, 1989.) The Agency had sent a copy of this order to counsel for respondent on July 31, 1992. Copy attached and incorporated into this response as Exhibit B.

The Agency finds no uncontrollable circumstances in the record of inspections, warning notice, extension, and reinspections of the facility.

The Board agrees with the Agency that no sufficient reason has been presented to justify reopening this case. Mr. Sickles' motion to reconsider and to vacate and reopen the July 30, 1992 default order is hereby denied.

To avoid any confusion about what might have happened in this case, the Board wishes to make it clear that if a petition for review had been allowed to be filed, Sections 31.1 and 42(b)(4) of the Act provide for only two outcomes:

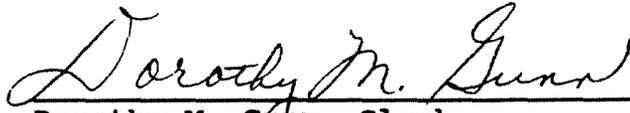
1. The Board can find that there was no violation of Section 21(p) or (q), or that the violation resulted from uncontrolled circumstances. Then, the person filing the petition pays nothing.
2. If the Board finds that a violation did occur, and that there were no uncontrollable circumstances, the person filing the petition pays the fine plus hearing costs. Hearing costs usually average from \$200.00 to \$1,000.00, and must be paid in addition to the penalty.

The Board will, however, grant an extension of time in which to pay the fine. The \$500.00 fine is now due to be paid on or before November 17, 1992.

IT IS SO ORDERED.

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I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 17th day of September, 1992, by a vote of 7-0.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board