

ILLINOIS POLLUTION CONTROL BOARD
June 23, 1994

SANGAMON COUNTY,)
)
 Complainant,)
)
 v.) AC 94-12
) (County No. SCDPH-94-AC-3)
) (Administrative Citation)
 ESG WATTS, INC.,)
 an Iowa Corporation,)
)
 Respondent.)

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

On May 25, 1994, the respondent, ESG Watts Inc. (ESG) filed a Motion to Vacate the Default Judgment. The Board will construe the current motion as a motion for reconsideration of the Board's default order. Prior to this filing, ESG on May 5, 1994, filed a motion to file petition for review instanter. The Board denied the motion to file instanter in its order dated May 19, 1994.

In respondent's present motion, it states that, although the administrative citations were received by the respondent's attorney, they were not pursued due to unforeseen and unavoidable circumstances. Respondent also states that the petition was on the respondent's attorney's legal secretary's desk, but she was stricken with illness requiring urgent medical care and therefore the petition for review was not filed. This argument was the same argument raised in the motion to file its petition for review instanter which was denied.

In addition to this argument, respondent states that legal counsel first became aware of the fact that the petition for review was not filed when the legal secretary returned to work. For these two reasons, the respondent requests the Board to grant the motion for reconsider and vacate the default order.

On June 2, 1994 the complainant filed its response to the motion. Complainant states that allowing the citations to sit unattended on a secretary's desk for two weeks is not grounds for vacating a default judgment, and that the secretary's illness does not explain respondent's failure to file a petition between March 14 and April 11, 1994. In addition, complainant requests that Kevin T. McClain's affidavit be stricken because it lacks a notary seal and signature. However, the complainant does not cite any authority in supporting its motion.

In ruling upon a motion for reconsideration the Board is to consider, but is not limited to, error in the previous decision

and facts in the record which may have been overlooked. (35 Ill. Adm. Code §101.246(d).) In Citizens Against Regional Landfill v. The County Board of Whiteside County (March 11, 1993), PCB 93-156, we stated that "[t]he intended purpose of a motion for reconsideration is to bring to the court'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 previous application of the existing law". (Korogluyan v. Chicago Title & Trust Co. (1st Dist. 1992), 213 Ill. App.3d 622, 572 N.E.2d 1154, 1158).

The administrative citation process is a creature of statute which has built-in time constraints for the complainant, the respondent and this Board. Section 31.1(d)(1) 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.

Sangamon County served the administrative citation on ESG March 11, 1994 and March 14, 1994. Having received no timely filed petition for review, the Board entered its default order on May 5, 1994 pursuant to Section 31.1(d)(1) of the Act. (415 ILCS 5/31.1(d)(1) (1992).)

The courts have clearly held that "an administrative agency is a creature of statute, any power or authority claimed by it must find its source within the provisions of the statute by which it is created." (Bio-Medical Laboratories, Inc. v. Trainor, (1977), 370 N.E. 2d 223.) The statute creating the Board's authority to find violation through the administrative citation process, quite clearly states that the Board shall find a violation if the person named in the administrative citation does not file a petition for review within 35 days of service of the administrative citation. In this matter the 35 days had run and by operation of law respondent was found in violation.

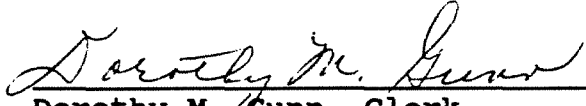
Nothing in respondents motion explains why no action was taken between March 11, 1994 and March 14, 1994 when respondent was served with the administrative citation and April 11, 1994 when the secretary became ill or why the respondent's attorney first became aware of the failure to file the petition only after the secretary returned. Respondent argues that the illness of its attorney's legal secretary and its attorney not becoming aware of the failure to file the petition for review until the return of the secretary are reasons to grant the motion for reconsideration and vacate the Board's default order. Respondent has not presented the Board with sufficient reason to reconsider

its default order. The motion for reconsideration is denied. Having denied the motion for reconsideration on the above grounds the Board has no need to rule on the County's request to strike Mr. McClain's affidavit.

IT IS SO ORDERED.

Section 41 of the Environmental Protection Act, (415 ILCS 5/41 (1992), provides for appeal of final orders of the Board within 35 days. The Rules of the Supreme Court of Illinois establish filing requirements. (See also 35 Ill. Adm. Code 101.246, Motion for Reconsideration).

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 23rd day of June, 1994, by a vote of 6-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board