

ILLINOIS POLLUTION CONTROL BOARD  
January 9, 1992

ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
 )  
Complainant, )  
 )  
v. ) AC 91-38  
 ) (IEPA No. 477-91-AC)  
DANNY W. MAINS, ) (Administrative Citation)  
 )  
Respondent. )  
 )

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

This matter comes before the Board on the December 13, 1991 motion to strike petition for review, vacate hearing officer scheduling order, and adopt default order filed by the Illinois Environmental Protection Agency (Agency). In support of its motion, the Agency states that respondent failed to file his petition for review within the proscribed time limits and, therefore, the Board does not have jurisdiction.

Respondent filed a response to the Agency's motion on December 19, 1991. Respondent states that he was unable to retain legal counsel in the early stages of this matter and that his petition was only two days beyond the maximum allowed time to file with the Board.

Section 31.1 of the Act sets forth the time limits and Board actions to be taken in an administrative citation procedure. Section 31.1(d)(1) specifically states that a petition for review must be filed within 35 days and if it is not the Board "shall" issue a default order assessing the statutory penalty. (Ill. Rev. Stat. 1990 Supp., ch. 111 1/2, par. 1031.1(d)(1).) The respondent in this matter did not file a petition for review within the 35 day period. Therefore, the Agency motion to strike the petition for review and vacate the hearing officer scheduling order is granted. A default order is issued below.

On August 20, 1991, an Administrative Citation was filed with the Board pursuant to Section 31.1 of the Illinois Environmental Protection Act (Act) by the Illinois Environmental Protection Agency (Agency). A copy of that Administrative Citation is attached hereto, but will not be printed in the Board's Opinion Volumes. Service of the Administrative Citation was made upon Danny Mains on August 16, 1991. The Agency alleges that on June 19, 1991, Danny Mains, present operator of a facility located in the County of Bond, violated Sections 21(q)(1) and 21(q)(3) of the Act. The statutory penalty established for each violation is

\$500.00 pursuant to Section 42(b)(4) of the Act.

Respondent did not file a timely petition for review. Therefore, pursuant to Section 31.1(d)(1), the Board finds that Danny Mains has violated the provisions alleged in the amended Administrative Citation. Since there are two (2) such violations, the total penalty to be imposed is \$1000.00.

1. It is hereby ordered that, unless the penalty has already been paid, within 30 days of the date of this Order Danny Mains shall, by certified check or money order payable to the State of Illinois and designated for deposit into the Environmental Protection Trust Fund, pay a penalty in the amount of \$1000.00 which is to be sent to:

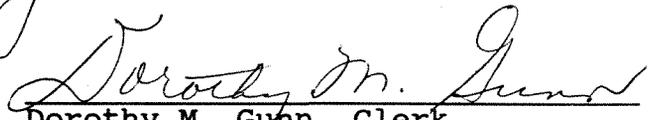
Illinois Environmental Protection Agency  
Fiscal Services Division  
2200 Churchill Road  
Springfield, IL. 62706.

2. Respondent shall include the remittance form and write the case name and number and their 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.

Section 41 of the Environmental Protection Act, Ill. Rev. Stat. 1989, ch. 111 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.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 9<sup>th</sup> day of January, 1992, by a vote of 6-0.

  
Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board