

ILLINOIS POLLUTION CONTROL BOARD  
December 6, 1989

ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
Complainant,	)	AC 89-196
	)	(Administrative Citation)
v.	)	IEPA Case No. 9869-AC
	)	
WAYNE D. MOLEN and FARMERS &	)	
MERCHANTS STATE BANK,	)	
Respondents.	)	

ORDER OF THE BOARD (by J. Marlin):

On October 18, 1989 the Board entered a default order against the respondent, Farmers & Merchants State Bank (Bank). The Bank informed the Board on October 30, 1989, that the default judgment should not have been entered because the Bank had mailed a Petition for Review. The Bank stated that the petition was mailed on September 21, 1989, which was within the permitted time period.

On November 2, 1989, the Board construed the Bank's October 30th letter as a motion for reconsideration. The Board Order directed the Bank to refile the motion with proof of service on the Agency and to supply any affidavits to facts the Bank wished to assert.

This matter is before the Board today on a motion for reconsideration of the October 18th Default Order filed by the Bank on November 13, 1989. In support of its motion the Bank attached two affidavits affirming that the Petition for Review was mailed on September 21, 1989 to both the Board and the Illinois Environmental Protection Agency (Agency).

The Board finds further support for the Bank's motion in a November 27, 1989 Response to the Board Order of November 2, 1989, filed by the Agency. A copy of the September 21 Petition for Review is in the Agency's files. The Agency has taken the position that the letter was received before the default date and that there is no reason to question the assertions made in the affidavits.


The Agency's Response also addresses issues that will arise if the Board vacates the October 18th Default Order. The Response contains six questions concerning issues of representation of the Bank, representation of the respondent Wayne Molen, and the effect of vacating the Default Order on Mr. Molen who has not yet appeared before the Board.

These questions were addressed in a December 4, 1989 letter from the Bank. The Bank stated that it was representing the Bank only and not representing Wayne Molen.

The Board hereby accepts the Bank's Petition for Review and vacates the Default Order of October 18, 1989.

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 6th day of November, 1989, by a vote of 6-0.

  
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Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board