

ILLINOIS POLLUTION CONTROL BOARD
January 21, 1999

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
v.) PCB 98-17
) (Enforcement - Land)
SCRAP TIRE RECYCLING CENTER, INC.,)
an Illinois corporation f/k/a RUSSELL)
FOUNDRY, THOMAS RATKOVIC, and)
LEON BENISH,)
)
Respondents.)

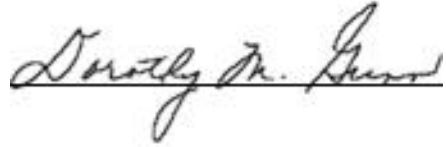
ORDER OF THE BOARD (by C.A. Manning):

This matter is before the Board on a motion for sanctions filed by the complainant on December 22, 1998. Pursuant to Section 101.280 of the Board's procedural rules (35 Ill. Adm. Code 101.280), the complainant requests the Board to order sanctions against respondent Leon Benish (Benish) as a result of his repeated refusal to respond to the complainant's outstanding discovery requests. In support of its request, the complainant relies on a hearing officer order issued on September 29, 1998, where Benish was ordered to produce his outstanding discovery responses on or before October 9, 1998. On January 8, 1999, Benish filed with the Board his answers to the first set of interrogatories and answers to the request for production of documents.

Although Benish's discovery responses are untimely, the Board finds that sanctions are not warranted at this time since the complainant has not shown any prejudice from Benish's late responses, Benish has filed his answers to complainant's discovery request, and Benish has not violated any previous Board orders. The Board notes, however, that Benish did not properly file the answers to the complainant's discovery requests in accordance with the Board's procedural rules. Specifically, Benish failed to sign his answers to attest to the truth of the answers he submitted. See 35 Ill. Adm. Code 101.242. Therefore, the Board will require Benish to file a signed affidavit within 30 days of the date of this order. Additionally, Benish failed to file four copies of his answers and proof of service with the Clerk of the Board in accordance with Section 101.103(b) of the Board's procedural rules (35 Ill. Adm. Code 101.103). The Board will therefore require that Benish provide proof of service upon the complainant of both the answers and the affidavit within 30 days of the date of this order. Benish will be subject to sanctions if he does not comply with this order.

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 21st day of January 1999 by a vote of 7-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", is positioned above a solid horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board