

ILLINOIS POLLUTION CONTROL BOARD
October 16, 1975

ENVIRONMENTAL PROTECTION AGENCY,)
)
 Complainant,)
)
 v.) PCB 74-485
)
 CITY OF FULTON,)
)
 Respondent.)

INTERIM OPINION AND ORDER OF THE BOARD (by Mr. Zeitlin):

This matter comes before the Board on a Complaint filed by the Attorney General for the Environmental Protection Agency, (Agency), on December 20, 1974, and an Amended Complaint filed April 3, 1975. The record in this matter includes United States Postal Service certified mail return receipts indicating that service of each of these Complaints on Respondent City of Fulton was adequate under our Procedural Rules.

A hearing was held in this matter on August 13, 1975, at Rock Falls, Illinois. The record indicates that Respondent was fully apprised of the fact that the hearing was to be held, and nonetheless defaulted. The City of Fulton was not represented at the hearing by any individual or representative. In addition, the Attorney General pointed out at the hearing that by failing to respond to a Request for Admission of Fact, Respondent City of Fulton admitted essentially every allegation in the Complaint and Amended Complaint.

A finding of violation is mandated in this case. The City of Fulton's default at hearing and failure to explain the Admissions of Fact made by it pursuant to Procedural Rule 314 are wholly unexcused.

The record in this matter is inadequate, however, and must be returned to the parties for completion. Although the instant record includes the record in an apparently related matter, City of Fulton v. EPA, PCB 74-490, wherein a Variance was granted by this Board on April 10, 1975, that relationship remains unclear. The instant record, in which the Attorney General's case rests solely on an admission of fact by default and a default at hearing, leaves open the following questions which we determine must be answered before a final Order can be entered to finally resolve the matter:

1. On April 10, 1975, this Board granted a Variance to Respondent City of Fulton. The Request for Admission of Facts and the Amended Complaint in this matter recite two solid waste management sites purportedly operated by Respondent; which, if either, of the sites in issue was the subject of our Variance Order?

2. What is the relationship between the two solid waste management sites alleged in the Complaint to be operated by Respondent?

3. Are either of the two solid waste management sites alleged in the Complaint to be operated by Respondent still in operation?

4. By way of further aggravation or mitigation of the violations alleged, if proven, what are the operational conditions on the solid waste management site or sites alleged to be operated by Respondent?

These questions must be answered before the Board may decide whether a penalty and/or any other remedy would be appropriate here.

Before concluding, we note that this entire matter, (to include the Variance case if it is actually related to this case), has been conducted in an unsatisfactory manner. The earlier case, (the Variance in PCB 74-490), was also decided on default of the Respondent. Until both parties are before us, or until we receive further information if Respondent City of Fulton again defaults, we may not arrive at a satisfactory final remedy.

This Opinion constitutes the findings of fact and conclusions of law of the Board in this matter.


ORDER

1. On default, the Respondent City of Fulton is found to have operated two solid waste management sites in Whiteside County, Illinois, without the proper operating permits from the Illinois Environmental Protection Agency, in violation of Section 21(e) of the Environmental Protection Act and Rule 202(b)(1) of Chapter 7: Solid Waste, of the Pollution Control Board Rules and Regulations.

2. This matter is remanded to the Hearing Officer for further proceedings in conformity with the foregoing Opinion, to be completed within 60 days of the date of this Order.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 16th day of October, 1975 by a vote of 3-0.

Mr. Young abstained.


Christan L. Moffett, Clerk
Illinois Pollution Control Board