

ILLINOIS POLLUTION CONTROL BOARD
July 1, 1993

SANGAMON COUNTY,)
)
 Complainant,)
)
 v.) AC 93-12
) Docket A
 DAVE PHILLIPS AND) (Administrative Citation)
 EARLE PHILLIPS,)
)
 Respondents.)

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

On March 31, 1993, Sangamon County filed an Administrative Citation (AC) with the Board. The Environmental Protection Act (Act) allows parties 35 days from the date of service to appeal the AC. (415 ILCS 5/31.1(b)(4)(1992).) The respondents did not file a petition for review within 35 days. On May 20, 1993, the Board entered a default order in this matter. On June 18, 1993, the respondents filed a motion for reconsideration from the default order. On June 25, 1993, Sangamon County filed a response in opposition to the respondent's motion for reconsideration.

In their motion for reconsideration, the respondents state that they made several attempts to clean up their property but due to illness and family responsibilities, they were unable to clean the property. (Mot. at 1.) Respondents also state in their motion that the open burning they were accused of was not garbage but instead, was wood. (Mot. at 2.) Finally, respondents state that they tried to clean up the area as soon as possible. (Mot. at 4.)

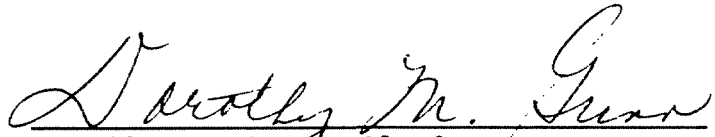
In their response, Sangamon County states that the respondents failed to file a petition for review with the Board within 35 days of the date of service of the AC and that the respondents do not explain this failure to file in their motion for reconsideration. (Resp. at 1.) In addition, Sangamon County argues that the Board should not reconsider its default order since the respondents have failed to comply with the Board's procedural rules concerning filing and service. (Resp. at 1.)

The Board has previously held that the statute does not provide for removal of the litter after the issuance of the AC as a reason to find no violation. Additionally, clean up of a site is not a mitigating factor under the AC program. (See, IEPA v. Jack Wright (August 30, 1990), AC 89-227, 114 PCB 863 and IEPA v. Dennis Grubaugh (October 16, 1992), AC 92-3, 136 PCB 425.) Therefore, the respondent's motion for reconsideration is denied.

The Board's May 20, 1993, default order is hereby modified to allow payment of the \$1,000 penalty within thirty days of today's order. The parties are to abide by the Board's May 20, 1993, default order as modified.

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 1st day of July, 1993, by a vote of 7-0.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board