

ILLINOIS POLLUTION CONTROL BOARD
August 26, 1993

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

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

On March 30, 1993, Sangamon County filed with the Board an administrative citation pursuant to Section 31.1 of the Environmental Protection Act (Act). 415 ICLS 5/31.1. Sangamon County alleged that the respondents, Dave and Earle Phillips, violated Sections 21(p)(1) and 21(p)(3) of the Act. 415 ICLS 5/21(p)(1) and (3). On May 20, 1993 the Board entered a default order in this matter against the respondents. 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. On July 1, 1993 the Board in its order denied respondents' motion for reconsideration. The respondents on July 28, 1993, filed with the Board a motion for reconsideration of the July 1, 1993, Board order.¹

Section 21(p)(1) provides that no person shall cause or allow the open dumping of any waste in a manner which results in the occurrence of litter. Section 21(p)(3) provides that no person shall cause or allow the open dumping of any waste in a manner which results in the occurrence of open burning. The Board stated in its July 1, 1993 order "the respondents state that they have made several attempts to clean up their property but due to illness and family responsibilities, they were unable to clean up the property." The Board also states that the respondents argued that "the open burning they were accused of was not garbage but instead, was wood." The respondents also stated they tried to clean up the area as soon as possible. The Board in its finding stated:

The Board has previously held that the statute [Section 31.1 of the Act] does not provide for the removal of the litter after the issuance of the AC (administrative citation) as a reason to find no violation. Additionally, clean up of the a

¹ The motion for reconsideration filed on July 28, 1993 will be cited as "Mot.".

site is not a mitigating factor under the AC (administrative citation) 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, ___ PCB ___.)

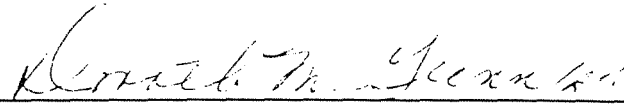
The respondents in the present motion for reconsideration raise the same arguments as in the previous motion for reconsideration. As stated in the previous order, Section 31.1 of the Act does not provide for the removal of litter after the issuance of the administrative citation as a defense to the violation. The Board upon considering these arguments denies this motion for reconsideration.

The respondents in this motion for reconsideration also explain that they had originally filed a petition for review with the Board within the 35 day filing deadline set forth in Section 31.1(d)(1). Respondents state "the petition for review was filed before the 35 days had passed." (Mot. at 1). Further, the respondents state that they were unaware of 35 Ill. Adm. Code 101.103(d) which requires all filings with the Board to be on recycled paper until receiving a "letter" from the Board. (Mot. at 1) Respondents assert that they attempted to develop a second petition for review to meet the Board's requirements but were unable to meet the 35 day deadline. (Mot. at 1) The Board is unaware of any "letter" denying the original petition, and the Clerk's records do not contain the alleged original petition for review. The Board notes the requirement in 35 Ill. Adm. Code 101.103(d) applies only to attorneys, organized environmental and trade groups and would not have denied respondents' petition for review for this reason. Based on the arguments contained in the instant motion, the Board again denies reconsideration and finds respondents in violation of Sections 21(p)(1) and 21(p)(3) of the Act.

The Board's July 1, 1993, order denying the motion for reconsideration is hereby modified to allow payment of the \$1000 penalty within thirty days of today's order. The parties are to abide by the May 20, 1993, default order as modified today.

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 26th day of August, 1993, by a vote of 6-0.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board