

ILLINOIS POLLUTION CONTROL BOARD  
April 21, 1994

SANGAMON COUNTY, )  
 )  
 Complainant, )  
 )  
 v. ) AC 93-30  
 ) (Administrative Citation)  
 ) (SCDPH 93-AC-5)  
 THE ILLINOIS NATIONAL BANK OF )  
 SPRINGFIELD, N/K/A FIRST OF )  
 AMERICA TRUST CO. AND RAY LANDERS, )  
 )  
 Respondents. )

ROBERT L. SMITH APPEARED ON BEHALF OF COMPLAINANT.

INTERIM OPINION AND ORDER OF THE BOARD (by E. Dunham):

This administrative citation was filed with the Board on August 2, 1993. On September 7, 1993, Ray Landers filed a letter requesting a hearing on this administrative citation. On November 29, 1993, the hearing officer sent the parties a letter concerning the setting of a hearing date. This letter stated that if the parties did not contact the hearing officer prior to January 14, 1994, that the matter would be set for hearing. On January 25, 1994, the hearing officer entered an order setting the hearing for March 2, 1994 and provided notice of the hearing to the parties.

Neither respondent appeared at the scheduled hearing. At the hearing, the hearing officer stated that she received a letter dated February 21, 1994 from Mr. Landers on February 28, 1994. The letter indicated that Mr. Landers would be travelling from February 22, 1994 through the end of March and requested that the hearing be held after this period of time. (Tr. at 3.) The letter from Mr. Landers was dated 28 days after the hearing officer had scheduled the hearing. The letter from Mr. Landers was neither in time for the hearing officer to consider when scheduling the hearing, nor did the letter request that the hearing be postponed. No correspondence was received from Illinois National Bank.

The administrative citation was issued as a result of an inspection of the facility on June 15, 1993, by Sangamon County Department of Public Health. The administrative citation alleges that Illinois National Bank of Springfield is the present owner and Ray Landers is the present operator of a facility in the County of Sangamon. The citation further alleges that the facility is an open dump, operating without a permit. The administrative citation alleges violation of sections 21(p)(1) and 21(p)(3) of the Act (415 ILCS 5/21(p)(1) and 21(p)(3)(1992)) which carries a statutory civil penalty of \$500 for each violation.

Failure of a party to appear at hearing constitutes a default, and thereafter, the Board shall enter an order as appropriate, as limited by the pleadings and based on the evidence introduced at hearing. (35 Ill. Adm. Code 103.220.) The Board finds that although Mr. Landers filed a petition for review, neither he nor a representative of Illinois National Bank appeared at hearing. Therefore, the respondents are in default. The Board finds that the administrative citation is sufficient to show violations of the Act. The Board further finds, pursuant to Section 31.1(d)(2), that respondents presented no information to indicate that the violations occurred due to uncontrollable circumstances. Therefore, pursuant to Section 31.1(d)(2), the Board finds that respondents violated each and every provision alleged in the Administrative Citation.

#### PENALTY

Penalties in administrative citation actions are prescribed by Section 42(b)(4) of the Act which states:

In an administrative citation action under Section 31.1 of this Act, any person found to have violated any provision of subsection (p) of Section 21 of this Act shall pay a civil penalty of \$500 for each violation of each such provision, plus any hearing costs incurred by the Board and the Agency. Such penalties shall be made payable to the Environmental Protection Trust Fund to be used in accordance with the provisions of "An Act creating the Environmental Protection Trust Fund", approved September 22, 1979, as amended; (415 ILCS 5/42(b)(4) (1992).)

There are two such violations, therefore, the total penalty to be imposed against respondents is \$1000.00.

Further, pursuant to Section 42(b)(4) of the Act, respondents are also required to pay hearing costs incurred by the Board and Sangamon County. The Clerk of the Board and Sangamon County will therefore be ordered to each file a statement of costs, supported by affidavit, with the Board and with service upon respondents. Upon receipt and subsequent to appropriate review, the Board will issue a final order in which the respondents are ordered to pay the penalty and the issue of costs is addressed.

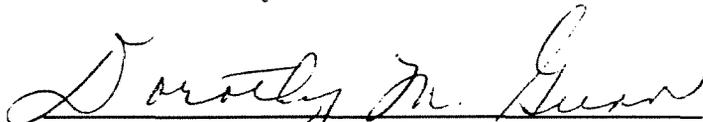
This opinion constitutes the Board's interim findings of fact and conclusions of law in this matter. A final order shall be issued pursuant to the interim order which follows.

## INTERIM ORDER

1. Respondents, the Illinois National Bank of Springfield, n/k/a First of America Trust Co. and Ray Landers, are hereby found to have violated 415 ILCS 5/21(p)(1) and 21 (p)(3)(1992) on June 15, 1993.
2. Sangamon County is hereby directed to file a statement of its hearing costs, supported by affidavit, with the Board and with service upon Respondents, within 14 days of this order. Within the same 14 days, the Clerk of the Board shall file a statement of the Board's costs supported by affidavit and with service on the Respondents.
3. Respondents are hereby given leave to file a reply/objection to the filings ordered in paragraph 2 within 14 days of receipt of that information, but in no case later than 40 days after the date of this order.
4. After the deadline for filing such information and reply thereto has expired the Board shall issue a final order assessing the statutory penalty, and making the appropriate award of costs.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above interim opinion and order was adopted on the 21<sup>st</sup> day of April, 1994, by a vote of 6-0.

  
Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board