

ILLINOIS POLLUTION CONTROL BOARD
March 25, 1993

SANGAMON COUNTY,)	
)	
Complainant,)	
)	
v.)	AC 92-32
)	(SHDPH 92-AC-8)
CHARLES FUCHS, NANCY)	(Administrative Citation)
FUCHS, TROY CURLEY,)	
and JUDITH CURLEY,)	
)	
Respondents.)	

ORDER OF THE BOARD (by J. Theodore Meyer):

This matter is before the Board on several filings. On March 22, 1993, complainant Sangamon County filed a motion to dismiss the complaint as to respondents Charles Fuchs and Nancy Fuchs. On that same date, Sangamon County also filed a motion for default judgment against respondents Troy Curley and Judith Curley. Sangamon County contends that this administrative citation was filed with the Board on April 27, 1992, that a copy of the citation was personally served on Troy Curley on April 14, 1992, and that Judith Curley was served by leaving a copy with Troy Curley and by mailing a copy of the citation on April 20, 1992. Sangamon County then maintains that neither Troy Curley nor Judith Curley have filed a petition for review of the citation, and moves the Board to enter a default judgment against the Curleys.

Also on March 22, 1993, respondent Troy Curley filed his response to the Board's March 11, 1993 order seeking information on the status of this case. In his response, Mr. Curley states that he was solely responsible in this case, and that he removed the debris within the time limit but was unable to notify the county because he had been evicted and was trying to find another home. Mr. Curley states that because he is on Social Security SSI, he cannot pay the fine in 30 days.

The Board grants Sangamon County's motion to dismiss Charles and Nancy Fuchs. The Board also grants the county's motion for a default judgment against the Curleys. The statute is clear that "if the person named in the administrative citation fails to petition the Board for review within 35 days from the date of service, the Board shall adopt a final order, which shall include the administrative citation and findings of violation as alleged in the citation, and shall impose the penalty specified in subdivision (b)(4) of Section 42." (415 ILCS 5/31.1(d)(1).) The Curleys did not file a petition for review within 35 days. Therefore, the Board has no choice under the statute but to enter a default judgment against the Curleys. However, the Board will

extend the time for payment of the penalty from 30 days to one year.

Therefore, pursuant to Section 31.1(d)(1), the Board finds that Troy Curley and Judith Curley have violated each and every provision alleged in the administrative citation. Since there is one violation, the total penalty to be imposed is set at \$500.00.

1. It is hereby ordered that, unless the penalty has already been paid, within one year of the date of this order Troy Curley and Judith Curley shall, by certified check or money order payable to the Sangamon County Public Health Department, pay a penalty in the amount of \$500.00 which is to be sent to:

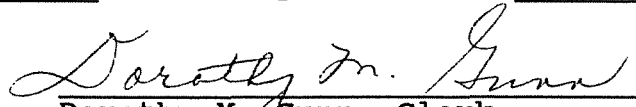
James D. Stone
Director of Public Health
Sangamon County Department of Public Health
200 South Ninth Street, Room 301
Springfield, IL 62701

2. Respondent shall include the remittance form and write the case name and number and their social security number on the certified check or money order.
3. Penalties unpaid after the due date shall accrue interest pursuant to Section 42(g) of the Environmental Protection Act.
4. Payment of this penalty does not prevent future prosecution if the violation continues.

IT IS SO ORDERED.

Section 41 of the Environmental Protection Act (415 ILCS 5/41) provides for the appeal of final Board orders. The Rules of the Supreme Court of Illinois establish filing requirements. (But see also 35 Ill. Adm. Code 101.246 "Motions for Reconsideration" and Castenada v. Illinois Human Rights Commission (1989), 132 Ill.2d 304, 547 N.E.2d 437; Strube v. Illinois Pollution Control Board, No. 3-92-0468, slip op. at 4-5 (3d Dist. March 15, 1993).)

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 25th day of March, 1993, by a vote of 6-0.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board

0140-0272