

ILLINOIS POLLUTION CONTROL BOARD  
December 6, 1991

ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
 )  
Complainant, )  
 )  
v. ) AC 91-40  
 ) (IEPA No. 500-91-AC)  
 ) (Administrative Citation)  
 )  
CURTIS A. NEWLAN, )  
 )  
Respondent. )

ORDER OF THE BOARD (by J. C. Marlin):

This case was closed by entry of a default Order imposing a \$500.00 fine on October 24, 1991. On November 12, 1991, the Board received a letter from Lisa M. Newlan stating that she may have misunderstood prior instructions and requesting "to Petition for Review now if that is at all possible". The letter also states that a duplicate letter was being written to the Agency attorney.

The Board will construe this letter as a motion to vacate the October 24, 1991 default Order. The Board requests that the Agency file a response to be received in the Board's office on or before January 6, 1992. The Clerk's Office is directed to provide the Agency with a copy of the Newlan letter along with this Order.

In reviewing this filing, it is obvious the Respondent is not disputing that the violation took place, nor is the Respondent asserting that the violation was the result of uncontrollable circumstances. The Respondent is asking the Board simply to reduce or eliminate the penalty. This the Board cannot do. The only determinations that the Board is allowed to make in this proceeding are whether the violation occurred and whether that violation was a result of uncontrollable circumstances. If those determinations are made against Respondent, the statutory penalty of \$500.00 per violation must be assessed by the Board.

To avoid any confusion about what could happen in this case, the Board wishes to make it clear that if a petition for review is allowed to be filed, Sections 31.1 and 42(b)(4) of the Act provide for only two outcomes:

1. The Board can find that there was no violation of Section 21(p) or (q), or that the violation resulted from uncontrollable circumstances. Then, the person filing the petition pays nothing.

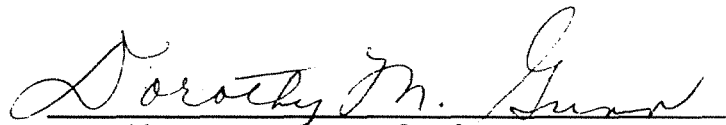
2. If the Board finds that a violation did occur, and that there were no uncontrollable circumstances, the person filing the petition pays the fine plus hearing costs. Hearing costs usually average from \$200.00 to \$1,000.00, and must be paid in addition to the penalty.

At hearing, Respondent must be able to reasonably assert that the violation was a result of uncontrollable circumstances or assert at hearing that the Agency has not proven that the violation occurred. If Respondent cannot reasonably make these kinds of statements (and explain why they are true), a petition for review would most likely be an unwise course of action since it would only cost the Respondent more money.

The Board today is not accepting the petition for review, but is considering whether to allow the petition to be filed. The Clerk is directed to serve Respondent with a copy of the Act and the Board's procedural rules via first class mail, along with a copy of this Order. Unless the Board receives a letter from Respondent stating that he or she understands the implications of the petition for review and wishes to pursue it, the Board will dismiss the petition for review. Such letter must be received by the Board not later than January 6, 1992.

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 6<sup>th</sup> day of December, 1991, by a vote of 7-0.

  
Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board