

ILLINOIS POLLUTION CONTROL BOARD  
December 20, 1990

ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
 )  
Complainant, )  
 )  
v. ) AC 89-231  
 ) (IEPA Case No. 9967-AC)  
 ) (Administrative Citation)  
LEON LAMET, )  
 )  
Respondent. )

ORDER OF THE BOARD BY (B. Forcade):

This matter comes before the Board on its own motion. The administrative citation in this matter was served to Leon Lamet on October 21, 1989. Leon Lamet died on January 30, 1990. The Illinois Environmental Protection Agency (Agency) filed a motion to substitute Leon Lamet's estate as respondent in this matter on October 12, 1990. After receiving no response from the executor of the estate, the Hearing Officer granted the Agency's motion on October 29, 1990.

The Board issued an Order on November 8, 1990 requesting that the parties comment on the issue of substituting a respondent's estate upon the death of the respondent as it pertains to an administrative citation proceeding. Neither party provided the Board with any legal analysis on the issue of the survivability of an administrative citation upon the death of a respondent.

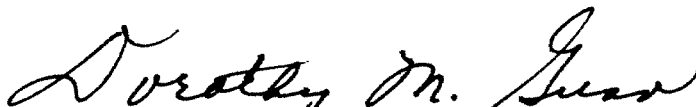
In Illinois, the abatement or survival of an action after the death of a party depends on whether the action is one of common law or of statute. When an action is created by statute and that statute, or any other statute, does not provide for survival of the action after the death of a party then that action abates upon the death of a party. Creighton v. Pope County, 386 Ill. 468, 54 N.E.2d 543 (1944); Shapiro v. Chernoff, 3 Ill.App.3d 396, 279 N.E.2d 454 (Ill. App. 1 Dist. 1972); Fireman's Fund Mortg. Corp. v. Zollicoffer, 713 F.Supp. 1112 (N.D.Ill. 1989). The administrative citation is expressly created by statute (Ill. Rev. Stat. 198\_, ch. 111 1/2, par. 1031.1) and does not contain any provision for survival of the cause of action. In accordance with Illinois law, this matter abated upon the death of Leon Lamet. The Board notes that the dismissal of an administrative citation due to the death of a named respondent also occurred in Illinois Environmental Protection Agency v. Donald and Catherine Bouthout, AC 89-170, May 24, 1990.

For the foregoing reasons, the Board hereby dismisses this

matter.

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 30<sup>th</sup> day of December 1990, by a vote of 7-0.

  
Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board