

ILLINOIS POLLUTION CONTROL BOARD
August 30, 1990

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
v.) AC 90-27
) IEPA No.147-90-AC
) (Administrative Citation)
JOHNSON BLACKWELL,)
)
Respondent.)

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

This matter is before the Board on the June 27, 1990 Motion to Reconsider or Vacate the Default Order of May 24, 1990 filed by the respondent, Johnson Blackwell. The administrative citation against the respondent was filed by the Agency on April 9, 1990. In support of his motion, respondent states that after the inspection of his property he "was lead to believe that no action would be taken against me until after June 1, 1990, because I agreed to comply."

Respondent agreed to comply at an Agency initiated "Pre-Enforcement Conference" (conference). The letter from the Agency establishing the date and time of the conference stated that the Agency's intent was to "refer this matter to the Attorney General's Office for the filing of a formal complaint. Prior to taking such action, however, you are requested to attend a Pre-Enforcement Conference". This letter did not mention the administrative citation enforcement mechanism under which this matter was brought. At the conference the respondent and the Agency discussed and agreed to a compliance program for clean up of the site by June 1, 1990. The compliance program was detailed in a letter from the Agency to the respondent.

The Illinois Environmental Protection Agency (Agency) filed a response to the motion to vacate on July 12, 1990. The Agency contends that it agreed not to file any "formal enforcement" action but that there were no agreement concerning any administrative enforcement action.

The respondent filed a response to the Agency's response on July 25, 1990. Pursuant to the Board's Procedural Rules, 35 Ill. Adm. Code 101.241(c), a moving person shall not have the right to reply except if permitted to prevent material prejudice. The Board does not find that material prejudice will result and will not consider this response in its opinion.

According to the two pleadings before the Board, the sequence of events leading up to the motion for reconsideration are as follows:

March 6, 1990	Inspection by Agency personnel.
April 3, 1990	Respondent receives "Pre-Enforcement Conference Letter" from Agency. Letter establishes meeting date of April 16, 1990, states Agency's intent to file with the Attorney General and does not mention the administrative citation enforcement mechanism.
April 9, 1990	Respondent receives Administrative Citation in mail.
April 13, 1990	Agency files Administrative Citation with Pollution Control Board.
April 16, 1990	Respondent attends pre-enforcement conference with Agency personnel to "discuss the validity of the apparent violation(s) and to arrive at a program to eliminate existing and/or future violation(s)".
April 17, 1990	Agency writes a letter, addressed to respondent and stating the "terms of the compliance program" which were "discussed and agreed to at the conference". These terms include a final date of June 1, 1990 for clean up.
May 13, 1990	Final date for filing an appeal of the administrative citation with the Board.
May 24, 1990	Board meeting in Chicago. Default Order issued against respondent. Fine of \$1,500.00.
June 1, 1990	Agreed upon final date for clean up of site.
June 13, 1990	Reinspection of site.
June 27, 1990	Respondent files timely motion of reconsideration with the Board.
July 12, 1990	Agency response to respondent's motion filed with the Board.

Section 31.1(a) of the Environmental Protection Act (Act) states that violations of Section 21(p) or 21(q) "shall be enforceable either by an administrative citation under this Section or as otherwise provided by this Act." (emphasis added) The Agency has several methods for handling an alleged violation: file an administrative citation (Section 31.1), or seek voluntary compliance formally (per Section 31(d)) or informally (through agreement). Failure to achieve voluntary compliance under the pre-enforcement process of Section 31(d) of the Act is normally followed by a formal enforcement action under Section 31(a) of the Act. A plain reading of the statute indicates that the General Assembly did not intend that a citizen be charged for the same violation under both the administrative citation provisions and the formal enforcement provisions of the Act.

The administrative citation process is designed for prompt and efficient enforcement of a limited number of the Act's provisions as compared to the more lengthy and widely used formal enforcement process provided by the Act. The Board has found in previous cases that the expeditious nature of the administrative enforcement process is greatly slowed by the simultaneous use of different methods for handling an alleged violation. This simultaneous use causes confusion with citizens unfamiliar with the Act and its enforcement mechanisms. IEPA v. Adolph Lo, AC 89-191, December 6, 1989; IEPA v. Gary W. Jacobs, AC 89-237, December 6, 1989; IEPA v. James Lauranzana, AC 89-202, December 20, 1989. The citizen respondents in those cases believed that the clean up agreements with the Agency removed the threat of an enforcement action and relieved them of the duty to respond to the administrative citation.


Simultaneous use also affects the efficiency of the administrative citation enforcement when the Agency files with the Board and then is prompted to move to dismiss because informal pre-enforcement action has resulted in clean up of the site. IEPA v. Kissner Company, AC 89-247, February 8, 1990; IEPA v. City of Freeport, AC 89-153, January 11, 1990; IEPA v. John Buris, Jr., AC 89-147, November 2, 1989; IEPA v. Raymond Tangman, AC 89-210, November 2, 1989.

In this matter, the April 3, 1990 letter from the Agency expressly stated the Agency's intention to file a formal complaint with the Attorney General and includes a statement that the letter constitutes the notice required under Section 31(d) of the Act for filing a formal complaint. The same letter also begins an informal pre-enforcement action. On April 9, 1990 the Agency filed with the Board and served upon the respondent the administrative citation for the same violations referred to in the April 3, 1990 letter. The Board finds that in light of the Agency's stated intention and notification to the respondent to pursue formal enforcement, the administrative citation in this matter was issued improperly. The Default Order of May 24, 1990 is vacated and this matter is dismissed.

IT IS SO ORDERED.

Board members J. Theodore Meyer and B. Forcade dissented.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 30th day of August, 1990, by a vote of 5-2.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board