

ILLINOIS POLLUTION CONTROL BOARD
June 22, 1989

IN THE MATTER OF:)
)
PEORIA DISPOSAL COMPANY,) AC 89-49
) (IEPA Docket No. 9507-AC)
Respondent.)

ORDER OF THE BOARD (by J. Marlin):

This matter comes before the Board upon a motion filed by the Illinois Environmental Protection Agency ("Agency") on May 30, 1989. The Agency's motion requests the following: to correct the name of the Respondent, to amend the citation, to vacate the Board's April 27, 1989 order in this matter and to enter an order in conformance with this motion.

On March 14, 1989 the Agency filed with the Board an administrative citation issued to Peoria Disposal Company. No petition for review of that citation was filed by Peoria Disposal. Consequently, on April 27, 1989 the Board issued a default order finding Peoria Disposal in violation of Sections 21(p)(5) and 21(p)(12) of the Environmental Protection Act ("Act") pursuant to Section 31.1(d)(1) of the Act. (Ill. Rev. Stat. ch. 111 1/2, pars. 1001-1052).

In support of its motion to correct the name of the Respondent, the Agency states that "the correct name of Respondent is PDC Services, Inc." The Agency also states that the Respondent's attorney agreed to the correction of the Respondent's name. The Respondent has not filed with the Board a response to the Agency's motion.

The Agency's motion does not assert that "Peoria Disposal Company" and "PDC" are one and the same or that one is the subsidiary of the other. Although correcting the Respondent's name may be merely a matter of form, the Agency's motion does not provide enough information for the Board to infer that it is. The administrative citation was originally served on Peoria Disposal Company; the Agency and Peoria Disposal had the opportunity to move to correct the name before the Board entered a default order and closed the case on April 27, 1989. The Agency's motion to correct the name of Respondent from Peoria Disposal Company to PDC Services, Inc. is hereby denied.

In support of its motion to amend the citation, the Agency states that "the parties agreed to dismiss Paragraph A(ii) of the

citation." Paragraph A(ii) of the citation refers to a violation of section 21(p)(12) of the Act for failure to collect and contain litter.

The Board has previously stated in another administrative citation case similar to this one:

[t]he words of Section 31.1 are unambiguous. If a petition for review is not filed within 35 days of service of the citation, the Board must issue an order with a finding of the violation as alleged by the citation and the imposition of penalties as mandated by the Act.

(In the Matter of: John Vander, AC 88-99, March 9, 1989 at 2). Thus, in Vander, the Board denied the Agency's motion to amend the citation and also denied the Agency's motion to amend the Board's default order of January 5, 1989, because the respondent did not file a petition for review and the Board had correctly issued the default order. (Id. at 1,3).

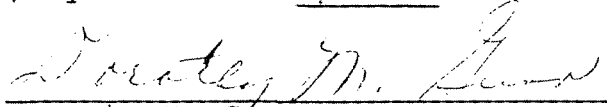
In this case, as in Vander, the Agency is requesting that the Board amend the citation and amend the Board's default order of April 27, 1989 (by vacating that order and entering an order in conformance with the Agency's motion). Also, as in Vander, no petition for review of that citation was filed by the respondent. The Agency has not asserted that the citation was improperly issued "such that the person complained of has not had the opportunity to contest the citation to the extent allowed by the Act." (Vander, AC 88-99, March 9, 1989, at 3). In short, the only reason given by the Agency for amending this citation is that the parties have agreed to do so.

In conclusion, the Board finds that since the respondent did not file a petition for review and the Board correctly issued the April 27, 1989 default order, the Agency's motion is hereby denied.

Section 41 of the Environmental Protection Act, Ill. Rev. Stat. 1987, ch. 111 1/2, par. 1041, provides for appeal of Final Orders of the Board within 35 days. The Rules of the Supreme Court of Illinois establish filing requirements.

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 2nd day of June, 1989, by a vote of 7-0.



Dorothy M. Gunn
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Illinois Pollution Control Board