

ILLINOIS POLLUTION CONTROL BOARD
October 25, 1990

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY)
)
Complainant,)
)
v.) AC 90-55
) (IEPA Case No. 294-90-AC)
) (Administrative Citation)
LINDELL LOVELESS,)
)
Respondent.)

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

This matter comes before the Board on a September 25, 1990 motion to vacate default order filed by the respondent. On September 27, 1990, the Board issued an Order requesting more information on this matter from the Illinois Environmental Protection Agency (Agency). On October 17, 1990 the Agency filed a response to the Board Order of September 27, 1990.

On February 5, 1990, the Agency inspected the respondent's site. Based on that first inspection, a package consisting of photographs, plat maps, deeds and the site inspection report were transmitted to the home office of the Agency where "the package was reviewed by the Enforcement Decision Group [EDG] which reviews all matters and then issues a decision as to action to be taken." In this matter, the EDG required that an Administrative Warning Notice (AWN) be sent to the respondent. The AWN was issued two months after the inspection, on April 2, 1990. The AWN allowed the respondent approximately one month to rectify the pollution problem.

A second inspection was held on May 10, 1990. As a result of the second inspection an Administrative Citation was personally served to respondent on July 5, 1990. A pre-enforcement conference letter (PECL) was mailed to the respondent on July 11, 1990.

Respondent sent separate replies to each Agency communication within a reasonable period of time. All three replies were sent only to the Agency and deny the allegations of wrongdoing, challenge the statutory basis of the alleged violations in the administrative citation, state actions taken toward compliance, and generally argue with the Agency's interpretation of the Act. No petition for review was filed with the Board.

Respondent has timely moved to have the Default Order vacated. In support of his motion he states that he "mistakenly responded to the person who had written to me instead of to the

person that the letters had instructed me to reply to." In addition, he states that efforts were made to clean up the site and that if it were not for the extremely wet spring season the site would have been cleaned up by the May 7, 1990 date set in the AWN.

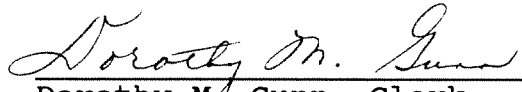
The Agency requests that the Board deny respondents motion to vacate because "the Agency believes respondent has failed to show a meritorious reason for setting aside the Order of Default." The Agency contends that respondent's claim of confusion on how to contest the administrative citation is unwarranted because the citation form includes instructions on how to initiate review and because respondent "received, along with his Citation, a separate piece of colored paper giving further clarification of the review process and the distinction between the two Agencies -- the Board and the EPA." The Board notes that the "piece of colored paper" or a copy thereof, is not included in the administrative record filed with the Board. In the future, the Board would like that paper included in the administrative citation filed with the Board whenever it has been sent to the respondent.

The Board finds that the respondent had ample notice of how to contest the administrative citation before the Board. The respondent failed to contest the citation. The motion to vacate is denied.

IT IS SO ORDERED.

Board Member Jacob D. Dumelle dissented.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 25th day of October, 1990, by a vote of 6-1.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board