

ILLINOIS POLLUTION CONTROL BOARD  
November 2, 1989

ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
 )  
Complainant, )  
 )  
v. ) AC 89-178  
 ) (IEPA No. 9829-AC)  
 ) (Administrative Citation)  
 )  
CITY OF HARVEY, )  
 )  
Respondent. )

ORDER OF THE BOARD (by J. Marlin):

This matter comes before the Board upon a motion to vacate filed by the respondent on October 10, 1989. The Agency filed a response on October 13, 1989. The respondent requests that the Board vacate its Order of September 28, 1989. That Order found the respondent to be in violation of Sections 21(q)(1), 21(q)(3) and 21(q)(5) of the Environmental Protection Act (Act).

The administrative citation was filed by the Illinois Environmental Protection Agency (Agency) on August 14, 1989. The respondent was served with the citation on the same date. The respondent did not file a petition for review with the Board within the 35 day statutory time period. Therefore, the Board issued the Order on September 28, 1989 finding the respondent in violation.

The respondent asserts that it failed to file a timely petition for review because "it was in the process of verifying ownership of the subject property in order to file an appropriate response and was under the mistaken belief that the hearing would not commence until prior notification was given to either the City of Harvey [or its attorneys]" (Motion, p.2).

In its response the Agency states:

That open dumping on said private property is not the crux of the Agency violations against the City of Harvey. Rather, the crux of the allegation pertains to open dumping on the City of Harvey side of said Rockwell Street.

(Ag. Response, p.1).

The Agency neither supports nor opposes the respondent's motion.

Both the Act and the administrative citation issued to the respondent clearly state that the respondent may appeal an administrative citation by filing a petition for review with this Board within 35 days of service of the citation upon the respondent. Both the Act and the citation also state that if the respondent does not file a petition for review within 35 days then the Board will enter a default judgment. The administrative citation issued to the respondent states in pertinent part:

You have the right to contest this Administrative Citation. See Ill. Rev. Stat. 1987, ch. 111 $\frac{1}{2}$ , par. 1031.1. If you elect to contest this Administrative Citation, you must file a Petition for Review with the Clerk of the Illinois Pollution Control Board. A copy of the Petition for Review should be filed with the Illinois Environmental Protection Agency. Such Petition for Review must be filed within thirty-five (35) days of the date of service of this Administrative Citation, or a default judgment shall be entered by the Pollution Control Board. The Petition for Review may be filed with the Clerk of the Illinois Pollution Control Board, 100 W. Randolph, Suite 11-500, Chicago, Illinois 60601, and a copy of said Petition for Review filed with the Illinois Environmental Protection Agency.

(AC 89-178 at 4).

Section 31.1 of the Act similarly states in pertinent part:

If the person named in the administrative citation fails to petition the Board for review within 35 days from the date of service, the Board shall adopt a final order, which shall include the administrative citation and findings of violation as alleged in the citation, and shall impose the penalty specified in subdivision (b)(4) of Section 42.

Ill. Rev. Stat. ch. 111 $\frac{1}{2}$ , par. 1031.1(d)(1). (Also see In re: John Vander, AC 88-99, March 9, 1989).

The respondent was given the opportunity to contest this administrative citation by filing a petition for review within 35 days of the date of service of the administrative citation. The respondent never filed a petition for review with the Board and the Board subsequently issued a default Order on September 28, 1989. Moreover, the Agency does not state that the citation was improperly issued. The respondent's motion to vacate is hereby

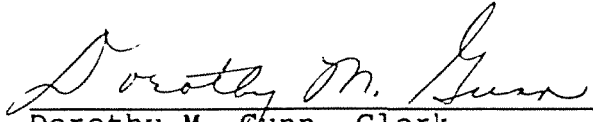
denied. See In Re: Ray Schroeder, AC 89-132 (September 28, 1989).

Section 41 of the Environmental Protection Act, Ill. Rev. Stat. 1987 ch. 111½ 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.

Board Members J.D. Dumelle and M. Nardulli dissented.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 2<sup>nd</sup> day of November, 1989, by a vote of 4-2.

  
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Dorothy M. Gunn, Clerk,  
Illinois Pollution Control Board