

ILLINOIS POLLUTION CONTROL BOARD  
June 2, 1994

COUNTY OF JACKSON )  
 )  
 Complainant, )  
 )  
 v. ) AC 93-49  
 ) (Administrative Citation)  
 )  
 PATRICK CHEAK, )  
 )  
 Respondent. )

ORDER OF THE BOARD: (C. A. Manning)

On October 4, 1993 the County of Jackson (County) filed this administrative citation against Patrick Cheak alleging violations of Section 21(p)(1) and 21(p)(5) of the Environmental Protection Act (Act) (415 ILCS 5/21(p)(1) and (5) (1992).) Patrick Cheak did not file a Petition for Review with the Clerk of the Board within 35 days of the date of service as allowed by Section 31.1(d)(2) of the Act. Pursuant to Section 31.1(d)(1) of the Act, on November 18, 1993, the Board entered a Default Order finding Patrick Cheak in violation of the provisions of the Act alleged in the administrative citation.

On May 2, 1994 the County filed a motion to dismiss the administrative citation against Patrick Cheak. In support of its motion the County states that Mr. Cheak has cleaned up the site and is in compliance of the law. Therefore, the County requests the Board to dismiss the administrative citation.

Section 41 of the Act and the Board procedural rules provides for an appeal of final orders of the Board within 35 days of the issuance of those orders. The Board entered the default order almost six (6) months ago. The County now is requesting the Board to dismiss or withdraw the order for the reason that the respondent has now cleaned up his property. The Board has found that the Act, by its terms, does not envision a properly issued administrative citation being dismissed or mitigated because a person is cooperative after its issuance or voluntarily cleans up the site. (See, IEPA v. Jack Wright, (August 30, 1990), AC 89-227, 114 PCB 863 and IEPA v. Dennis Grubaugh, (October 16, 1992), AC 92-3, 136 PCB 425.)

Additionally, the Board's authority to vacate a default order is limited by statute, which has built-in time constraints for the complainant, the respondent and this Board. Section 31.1(d)(1) states:

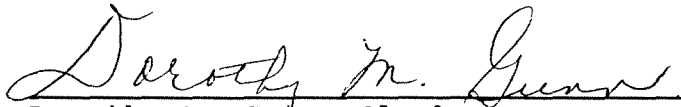
If the person named in the administrative citation fails to

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.

The Board in this case, based on these facts, declines to exercise any authority it may have to vacate a default order after the statutory time to appeal. The motion is denied.

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, 1994, by a vote of 6-0.

  
Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board