

ILLINOIS POLLUTION CONTROL BOARD
October 20, 1994

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	
)	
v.)	AC 94-42
)	(IEPA No. 352-94-AC)
)	(Administrative Citation)
WAYNE D. ALBERTS AND)	
SHARON ALBERTS,)	
)	
Respondents.)	

ORDER OF THE BOARD (by M. McFawn):

This matter is before the Board on an administrative citation (AC) filed by the Illinois Environmental Protection Agency (Agency) pursuant Section 31.1 of the Environmental Protection Act (Act). (415 ILCS 5/31.1 (1992)). The citation was filed with the Board on June 29, 1994. Service of the administrative citation was made upon the respondents Wayne Alberts and Sharon Alberts on June 28, 1994. Having not received a petition for review within the 35 days from the date of service pursuant to Section 31.1(d)(1) of the Act (415 ILCS 55/31.1(d)(1) (1992)), the Board entered a default order against respondents on August 11, 1994.

On September 6, 1994, the respondents filed a "Motion to Vacate Order" and requested the Board to reconsider. Respondents state that repeated efforts to contact the Agency attorney who prepared the administrative citation were made within the 35 days allowed for "some response or review." Those attempts however failed and the respondents were only subsequently advised that the attorney had been on vacation. Respondents also state that they did not cause open dumping of any waste in any manner. Finally, respondents assert that the Board's default order recites different violations than those alleged by the Agency in the administrative citation.

The Agency, also on September 6, 1994, filed a "Response to the Motion to Vacate Order" and a "Motion for Correction of Order." The Agency states that the respondents did not file a petition for review within the statutory period and that any relief being sought should be based upon the provisions found at 35 Ill. Adm. Code 103.240 and 103.241. Furthermore, the Agency concludes that respondents' motion does not state any reasonable grounds to vacate the Board's August 11, 1994 order.

In addition to the response, the Agency also filed a motion

to correct the Board's order pursuant to 35 Ill. Adm Code 103.240. The Agency moves the Board to correct the August 11, 1994 order to reflect the proper alleged violations of the Act. The Board's order states that the Agency alleged that the respondents violated Section 21(o)(1) and (3) of the Act. However, the Agency alleged that the respondents violated Section 21(p)(1) and (3) of the Act. The Agency states that pursuant to 35 Ill. Adm. Code 103.241(a) the Board may correct clerical mistakes in orders of its own initiative or on the motion of any party.

Section 31.1 of the Act describes the process and the Agency's, local unit of government's, and Board's authority and/or role in the administrative citation process. Section 31.1(b) sets forth the Agency's and unit of local government's authority and procedures to issue an administrative citation. If a person is properly issued an administrative citation Section 31.1(d)(1) states that:

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 administrative citation issued to the respondents states the following on page 4:

PROCEDURE FOR CONTESTING THIS
ADMINISTRATIVE CITATION

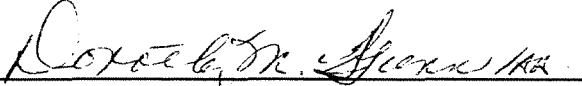
You have the right to contest this Administrative Citation. See 415 ILCS 5/31.1, 1992; Ill. Rev. Stat. ch. 111 1/2, para. 1031.1. If you elect to contest this Administrative Citation, you must file a Petition for Review with the Clerk of the Illinois Pollution Control Board. A copy of the Petition for 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 at the State of Illinois Center, 100 West Randolph, Suite 11-500, Chicago, Illinois 60601; and a copy of said Petition for Review filed with the Illinois Environmental Protection Agency at 2200 Churchill Road, P.O. Box 19276, Springfield, Illinois 62794-9276, Attention: Division of Legal Counsel.

The respondents' attempts to contact the preparer of the administrative citation is of no consequence pursuant to the procedures that the Illinois legislature promulgated into law at Section 31.1 of the Act. If respondents wanted to properly contest the issuance of the administrative citation they should have filed a petition for review with the Board pursuant to Section 31.1(d)(1) of the Act and as described in the administrative citation itself. The Board cannot now allow for respondents to contest the administrative citation. To do so would circumvent the law as enacted by the legislature. Therefore, the Board will not vacate its order of August 11, 1994.

The Board grants the Agency's motion to correct the order. The August 11, 1994 order inadvertently stated in the first paragraph when discussing the Agency's allegations "Section 21(o)(1) and 21(o)(3)." The order should have referenced Section 21(p)(1) and (p)(3) of the Act which the Agency alleged in the administrative citation. However, when making a finding in the Order the Board correctly states that the respondents have violated the provisions alleged in the administrative citation.

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 20th day of October, 1994, by a vote of 5-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board