

ILLINOIS POLLUTION CONTROL BOARD
March 9, 1989

IN THE MATTER OF:)
JOHN R. VANDER,) AC 88-99
)
Respondent.)

ORDER OF THE BOARD (by J. Theodore Meyer):

On February 14, 1989, the Illinois Environmental Protection Agency (Agency) filed a Motion to Amend Citation and Board Order of January 5, 1989. John R. Vander did not file a response to the motion.

The Board received a copy of the administrative citation issued to Vander on November 21, 1988. No petition for review of that citation was ever filed by Vander.

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 violations as alleged in the citation and shall impose the penalty specified in subdivision (b)(4) of Section 42. (emphasis added)

Ill. Rev. Stat.
1987, ch. 111^{1/2}
par. 1031.1.

In accordance with this Section, the Board issued an order on January 5, 1989 finding Vander in violation of Sections 21(q)(1), 21(q)(2), 21(q)(3), 21(q)(4), 21(q)(5) and 21(q)(6) as alleged in the Agency's citation. As required by the Act the order also set forth a \$3000.00 civil penalty. The Agency's motion admits that all statutory time periods had lapsed and that the Board correctly issued the default order.

In its motion, the Agency states that as a result of discussion between the Agency and Vander, Vander has "commenced a clean-up program, future plan of corrective action and is considering the feasibility of applying to the Agency for a permit to conduct a waste transfer station." The Agency requests

that "in furtherance of continued good faith interaction to resolve the environmental concerns of the parties," the Board strike three of the counts of violation from the citation which was issued to Vander: Sections 21(q)(4), 21(q)(5) and 21(q)(6). Correspondingly, the Agency asks that the Board's January 5, 1989 order be amended concerning finding of violation and that the penalty be reduced from \$3000.00 to \$1500.00.

The 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 issuing such an order the Board does not substantively review the allegations of the Agency.

The Board views administrative citations as being analogous to a traffic ticket. The Agency or unit of local government may only issue citations based on violations observed by an inspector. If a petition for review is filed, the Board may then review the Agency's findings pursuant to a hearing. Specifically, the Board must determine whether the violation occurred; the Agency has burden of proof for that showing. If the person who receives the citation proves that the violation "resulted from uncontrollable circumstances", the Board must issue an order which "makes no finding of violation and imposes no penalty", pursuant to Section 31.1(d) of the Act. Ill. Rev. Stat. 1987, ch. 111¹/₂, par. 1031.1(d).

Alternatively, if the citation recipient does not contest the citation, that person must pay the penalty prescribed by the citation, just as one must pay an uncontested traffic ticket. In such a situation, the issues of whether the violations occurred or whether they were uncontrollable are not substantively explored. Like an uncontested traffic ticket, a promise of future good behavior is irrelevant to the legal obligation to pay the penalty prescribed by an uncontested citation. Even in the context of a contested violation, post-citation activities of the citation recipient are not material to the Board's review pursuant to Section 31.1(d)(2) of the Act.

The Board understands that the Agency is attempting to utilize the administrative citation process as a negotiating tool to provide an incentive for people to comply with the Act. The goal of that activity - compliance with the Act - is admirable; however, the means by which the Agency is seeking to achieve that goal, as evidenced by the Agency's instant motion, are inconsistent with the intent behind the administrative citation process.

The administrative citation procedure is not structured to encourage the needless expenditure of state resources. Under the statutory scheme, the issuance of an order concerning an uncontested administrative citation is automatic. The Board does

not need to expend its resources substantively reviewing the citation. Similarly, once a citation is issued by the Agency, the Agency need not become further involved with that particular citation unless the citation is contested. The administrative citation process was designed as providing a fast and effective means of enforcing of the Act at a minimal cost to the state. This view is further bolstered by the fact that a citation recipient must pay hearing costs if that person unsuccessfully contests a citation. No other enforcement mechanism under the Act contains such a provision. Reconsidering a Board order which was issued automatically under Section 31.1(d)(1) for reasons such as those stated by the Agency in its February 14th motion is not an efficient method of implementing the administrative citation system.¹

Additionally, the administrative citation process is structured to provide an inherent incentive to people to comply with the Act, without the need for the Agency to negotiate away counts of previously issued citations. It is obvious that the Agency has a certain degree of prosecutorial discretion when it issues a citation. It is equally clear that if the recipient of an administrative citation does not correct an on-going violation, the Agency can issue subsequent citations to that person. In theory, the threat of swift and additional penalties prescribed by subsequent citations should provide sufficient incentive for compliance. As a result, the counts and penalties of past citations need not be modified to prompt future compliance. If a citation recipient violated the Act as alleged in a properly issued citation, that person should pay the appropriate civil penalty as mandated by the Act. The Board does not believe that the State should retreat from that simple proposition.

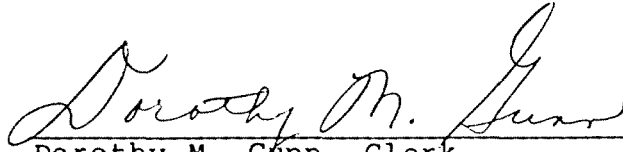
In conclusion, the Board finds that it is neither proper nor consistent with the intent of the administrative citation process to grant the Agency's motion. As a result, the motion is denied.

IT IS SO ORDERED.

¹ Of course if the Agency improperly issued a citation such that the person complained of has not had the opportunity to contest the citation to extent allowed by the Act, an Agency motion seeking the modification of a Section 31.1(d)(1) order might be warranted. However, that is not the situation at hand.

R. Flemal dissented.

I, Dorothy M Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 9th day of March, 1989, by a vote of 6-1.



Dorothy M. Gunn, Clerk,
Illinois Pollution Control Board