

ILLINOIS POLLUTION CONTROL BOARD  
May 25, 1989

IN THE MATTER OF: )  
LINCOLN CHAMBER OF COMMERCE, )  
 )  
Respondent, )  
 )  
v. ) AC 89-26  
 ) (IEPA Docket No. 9417-AC)

ORDER OF THE BOARD (by J. Marlin):

On April 27, 1989, the Board received a letter from the Lincoln/Logan County Chamber of Commerce (Chamber) which requests that the Board rescind its March 23, 1989 Order which imposed a \$500 civil penalty in this matter pursuant to Section 42(b)(4) of the Illinois Environmental Protection Act (Act). The Board construes this filing as a motion to vacate.

In accordance with Section 31.1 of the Act the Board issued its March 23, 1989 Order because the Chamber did not file a petition for review within 35 days after it received the citation. The citation alleged a litter violation pursuant to Section 21(q)(1) of the Act. Now, the Chamber requests that the default Order be vacated since it has subsequently cleaned up the site. Specifically, the Chamber asserts that 20,000 scrap tires have been removed from the site.

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<sup>1</sup>/<sub>2</sub>, par. 1031.1.

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. 111<sup>1/2</sup>, 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 issue 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 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. 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 Chamber in its motion is not consistent with the clear intent of the legislative language which established the administrative citation process.<sup>1</sup>

Additionally, the administrative citation process is structured to provide an inherent incentive to people to comply with the Act. It is 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

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<sup>1</sup> 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, a motion seeking to vacate a Section 31.1(d)(1) order might be warranted. However, that is not the situation at hand.

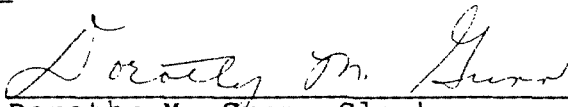
theory, the threat of swift and additional penalties prescribed by subsequent citations should provide sufficient incentive for compliance. As a result, the counts and penalties of past citations need not be modified to prompt future compliance.

The request at hand is directly analogous to one brought by the Agency in In the Matter of: John R. Vander, AC 88-99 (March 9, 1989). There, the Agency filed a motion to vacate a previously-issued default Order on the grounds that the respondent had commenced a clean-up program. The Board found that the motion was neither proper nor appropriate given the language of the Act and the intent behind the administrative citation process. As a result, the Board denied the Agency's motion.

The same rationale applies here. The Board notes that on May 11, 1989, the Agency notified the Board that the Chamber had paid the civil penalty in this matter. The Chamber's 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 25<sup>th</sup> day of May, 1989, by a vote of 7-0.

  
 Dorothy M. Gunn, Clerk  
 Illinois Pollution Control Board