

ILLINOIS POLLUTION CONTROL BOARD

March 4, 2004

ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Complainant,	)	AC 04-41
	)	(IEPA No. 15-04-AC)
v.	)	(Administrative Citation)
	)	
CHERYL CLAYTON,	)	
	)	
Respondent.	)	

ORDER OF THE BOARD (by J.P. Novak):

On January 28, 2004, the Illinois Environmental Protection Agency (Agency) timely filed an administrative citation against Cheryl Clayton. *See* 415 ILCS 5/31.1(c) (2002); 35 Ill. Adm. Code 108.202(c). The Agency alleges that Cheryl Clayton violated Section 21(p)(1) of the Environmental Protection Act (415 ILCS 5/21(p)(1) (2002)). The Agency further alleges that Cheryl Clayton violated these provisions by causing or allowing the open dumping of waste in a manner that resulted in litter at 766 North 550th Avenue, Quincy, Adams County.

As required, the Agency served the administrative citation on Cheryl Clayton within “60 days after the date of the observed violation.” 415 ILCS 5/31.1(b) (2002); *see also* 35 Ill. Adm. Code 108.202(b). On March 1, 2004, the Board received a letter from Cheryl Clayton to the Agency that the Board construes as a timely petition to contest the administrative citation. *See* 415 ILCS 5/31.1(d) (2002); 35 Ill. Adm. Code 108.204(b). Cheryl Clayton alleges that she has cleaned up the basement and will complete the cleanup in the spring. *See* 35 Ill. Adm. Code 108.206.

In the March 1, 2004 petition, Cheryl Clayton requests an “extension” until spring to complete the cleanup. The Board cannot simply grant an “extension.” Whether the site is cleaned up or not after an administrative citation is filed is not relevant to whether the Act was violated as alleged on the date of the inspection. What may be relevant are those facts tending to show that the violation did not occur or that “the violation resulted from uncontrollable circumstances,” 415 ILCS 5/31.1(d)(2) (2002), and defenses listed at 35 Ill. Adm. Code 108.206.

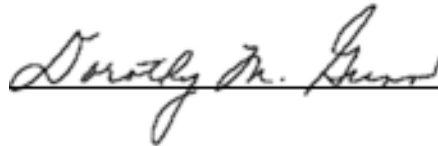
What the Board can do is treat the letter as a petition for review and accept it for hearing. The Board directs the hearing officer to proceed expeditiously to hearing. The hearing officer will give the parties at least 21 days written notice of the hearing. 35 Ill. Adm. Code 108.300; *see also* 415 ILCS 5/31.1(d)(2) (2002). By contesting the administrative citation, Cheryl Clayton may have to pay the hearing costs of the Board and the Agency. *See* 415 ILCS 5/42(b)(4-5) (2002); 35 Ill. Adm. Code 108.500. A schedule of the Board’s hearing costs is available at the Board’s offices and on the Board’s Web site at www.ipcb.state.il.us. 35 Ill. Adm. Code 504.

Cheryl Clayton may withdraw her petition to contest the administrative citation at any time before the Board enters its final decision. If Cheryl Clayton chooses to withdraw her petition, she must do so in writing, unless she does so orally at hearing. *See* 35 Ill. Adm. Code 108.208. If Cheryl Clayton withdraws her petition after the hearing starts, the Board will require Cheryl Clayton to pay the hearing costs of the Board and the Agency. *See id.* at 108.500(c).

The Agency has the burden of proof at hearing. *See* 415 ILCS 5/31.1(d)(2) (2002); 35 Ill. Adm. Code 108.400. If the Board finds that Cheryl Clayton violated Section 21(p)(1), the Board will impose civil penalties on Cheryl Clayton. The civil penalty for violating Section 21(p) is \$1,500 for a first offense and \$3,000 for a second or subsequent offense. 415 ILCS 5/42(b)(4-5) (2002); 35 Ill. Adm. Code 108.500. However, if the Board finds that Cheryl Clayton “has shown that the violation resulted from uncontrollable circumstances, the Board shall adopt a final order which makes no finding of violation and which imposes no penalty.” 415 ILCS 5/31.1(d)(2) (2002); *see also* 35 Ill. Adm. Code 108.500(b).

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on March 4, 2004, by a vote of 5-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", written over a horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board