BEFORE THE
ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois,	)	
Complainant	)	No. PCB 04-9 (Enforcement - Air)
v.	)	
AARGUS PLASTICS, INC., an Illinois corporation,	)	
Respondent.	)	

NOTICE OF FILING

To: See Attached Service List

PLEASE TAKE NOTICE that on April 2, 2004, we filed with the Clerk of the Illinois Pollution Control Board, 100 West Washington Street, Suite 11-500, Chicago, Illinois 60601, an original and nine (9) copies of the Respondent's Response to the State's Motion to Strike or Dismiss Aargus's Affirmative Defenses, a copy of which is attached hereto and hereby served upon you.

AARGUS PLASTICS, INC.

By Leo P. Dombrowski

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PROOF OF SERVICE
(State of Illinois v. Aargus Plastics)

I, Larysa Dema, a non-attorney, certify that I served a copy of the foregoing Response and Notice of Filing upon the following by U.S. Mail and depositing same at 225 W. Wacker, Chicago, Illinois, 60606 on this 2nd day of April, 2004, with proper postage prepaid:

Bradley P. Halloran
Hearing Officer
Illinois Pollution Control Board
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[X] Under penalties as provided by law pursuant to ILL. REV. STAT. CHAP. 110 - SEC 1-109, I certify that the statements set forth herein are true and correct.

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Complainant,	)	
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AARGUS PLASTICS, INC., an Illinois corporation,	)	
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RESPONDENT'S RESPONSE TO THE STATE'S MOTION TO STRIKE OR DISMISS AARGUS'S AFFIRMATIVE DEFENSES

Respondent hereby responds to Complainant's Motion to Strike or Dismiss Aargus Plastics' Affirmative Defenses. For the reasons discussed below, the State's Motion should be denied.

I. INTRODUCTION

This case concerns a printing operation previously operated by Aargus at a facility in Des Plaines, Illinois. The State alleges that Aargus violated its air permits over a period of several years, failed to comply with ink VOM content regulations, failed to submit certain reports, and did not hold sufficient allotment trading units for its seasonal emissions.

Aargus denies that it violated the Environmental Protection Act, regulations, and permits as the State has alleged. The State has now moved to strike all of Aargus's affirmative defenses, claiming that Aargus has failed to plead the defenses with the required specificity to allow the State to understand the defenses or that the facts alleged in the defenses are legally insufficient. As shown below, the State is both factually and

legally mistaken. Additionally, the State is premature in asking the Board to strike certain of the defenses at this stage of the proceedings.

II. ARGUMENT

To the extent the State claims that Aargus has not sufficiently pleaded facts in support of its defenses, the State is not entitled to have those defenses stricken, but it may seek additional information if it desires. The State may also seek discovery on the defenses. As noted below, the Board has refused in other cases to strike many of the defenses asserted by Aargus because "the Board cannot decide the merits of the defense before hearing of the evidence." *See, e.g., People v. John Crane, Inc.*, PCB 01-76, slip op. at 8 (May 17, 2001).

The Board's procedural regulations provide that "facts constituting an affirmative defense must be plainly set forth before hearing in the answer. . . ." 35 Ill. Admin. Code § 103.204(d). Although the Board's rules do not explain what is a sufficient statement of facts supporting a defense or how the Board is to evaluate the sufficiency of such a statement, the Illinois Code of Civil Procedure does offer some guidance. Section 2-612(b) of the Code provides that, "No pleading is bad in substance which contains such information as reasonably informs the opposite party of the nature of the claim or defense which he or she is called upon to meet." 735 ILCS 5/2-612(b).

Additionally, if a party deems a pleading "wanting in details," it may request a bill of particulars "point[ing] out specifically the defects complained of or the details desired." "[I]f the bill of particulars delivered is insufficient, the court may, on motion and in its discretion, strike the pleading, allow further time to furnish the bill of particulars or require a more particular bill to be filed and served." 735 ILCS 5/2-607(a

& b). The purpose of these pleading rules is to sufficiently inform the complainant of the legal theories presented by the respondent in defense of the action and to provide the complainant a remedy, not of striking the defense, but of seeking additional information if it deems the facts alleged in the affirmative defenses to be insufficient. As shown below, not only are Aargus's defenses sufficiently pleaded, but it would also be premature for the Board to strike them at this stage of the proceedings.

Affirmative Defense No. 2 (Jurisdiction)

Complainant's jurisdictional arguments are unsupported by the clear language of Section 31, the normal rules of statutory construction, and the Board's precedent. If Complainant's arguments were true, IEPA's non-compliance with the pre-complaint requirements of Section 31 would never affect the Board's jurisdiction over an enforcement matter. This is simply not true.

Prior to the 1996 amendments to Section 31, the Board had held that non-compliance with Section 31 requirements divested the Board of jurisdiction over an enforcement matter. For example, in *People v. American Waste Processing Ltd.*, PCB 96-264, 1997 Ill. ENV LEXIS 48 at ** 7-10 (Jan. 23, 1997), respondent argued that the Agency's failure to comply with Section 31's pre-complaint notice requirements divested the Board of jurisdiction over the matter. The Board agreed and dismissed the action, holding that the Agency's failure to follow the notice procedures was fatal to the State's complaint: "Lack of such notice prior to the filing of a complaint results in defective or insufficient notice on all counts." *See also People v. Amsted Indus., Inc.*, PCB 97-38, 1996 Ill. Env. LEXIS 897 at * 9 (Oct. 16, 1997) (because the Agency failed to comply

with Section 31 requirements "prior to the filing of the complaint in this matter, the Board grants respondents' motion to dismiss.")

The legislature's 1996 amendments to Section 31 did not overrule or at all affect this line of Board decisions. In fact, the amendments added significant pre-complaint requirements that the Agency must meet as a pre-condition of referring a matter to the Attorney General. One of the new requirements is that:

> Within 180 days of becoming aware of an alleged violation of the Act or any rule adopted under the Act or of a permit granted by the Agency or condition of the permit, the Agency shall issue and serve, by certified mail, upon the person complained against a written notice informing that person that the Agency has evidence of the alleged violation.

415 ILCS 5/31(a)(1) (emphasis added). The amended Section also requires that the Agency offer an opportunity to respond to the written notice and to meet with Agency personnel to attempt to resolve differences, all prior to filing of a complaint. *Id.* at 5/31(a)(2-7). Only if the Agency has complied with these procedures, and only if the Agency and respondent have not resolved their differences, is the Agency allowed to refer the matter to the Attorney General for the filing of a complaint with the Board:

> For alleged violations which remain the subject of disagreement between the Agency and the person complained against following . . . . fulfillment of the requirements of subsections (a) and (b) of this Section, the Office of the Illinois Attorney General or the State's Attorney of the county in which the alleged violation occurred shall issue and serve upon the person complained against a written notice, together with a formal complaint. . . . .

Id. at 5/31(c)(1) (emphasis added).

In enacting the old Section 31, the legislature also used the word "shall" to require the Agency to comply with certain conditions before a complaint could be filed with the Board:

> [P]rior to issuance and service of a written notice and formal complaint . . ., the Agency shall issue and serve upon the person complained against a written notice informing such person that the Agency intends to file a formal complaint.

The Agency was also required to provide an opportunity for pre-complaint resolution of the matter. 415 ILCS 5/31(d). (The text of old Section 31 is attached hereto as Exhibit A.)

When used in a statute, "shall" is generally interpreted to mean that something is mandatory. *Citizens Organizing Project v. Department of Natural Resources*, 189 Ill. 2d 593, 598, 727 N.E.2d 195, 198 (2000). Additionally, in amending a statute, the legislature is presumed to have been aware of the decisions interpreting the statute "and to have acted with this knowledge." *Morris v. Dawson Nursing Center, Inc.*, 187 Ill. 2d 494, 499, 719 N.E.2d 715, 718 (1999). Unless otherwise indicated, the legislature "intends a consistent body of law when it amends" a statute. *In re Lasky*, 176 Ill. 2d 75, 79, 678 N.E.2d 1035, 1037 (1997).

In opposition, the State claims that "the 180 day requirement is directory rather than mandatory in nature." (Motion p. 5.) If the State's position were true, then the legislature would have indicated its displeasure with the line of Board decisions provisions holding that non-compliance with old Section 31 divested it of jurisdiction and would have overruled those decisions in amending Section 31. Additionally, the State does not explain how the use of shall in old Section 31 was "mandatory" while the use of shall in amended Section 31 somehow became "directory." Indeed, the State reads identical language in both versions of Section 31 to, in one instance, safeguard a respondent's rights (mandatory) and also to merely direct official conduct (directory).

See Crane, slip op. at 6. The State is simply interpreting both versions as it likes without resorting to traditional principles of statutory construction.

As shown in the Board decisions noted above, non-compliance with the pre-complaint requirements of old Section 31 did divest the Board of jurisdiction over an enforcement matter. In amending Section 31 in 1996, the legislature did not indicate that this long line of case was to be overruled and, therefore, affirmed these Board's decisions.

In *People v. Eagle-Picher*, PCB 99-152 (July 22, 1999), the respondent moved to dismiss the State's complaint because the State (not the Agency) had not complied with the new requirements of amended Section 31. The Board denied the motion, finding that the new requirements do not apply to the Attorney General with respect to claims that were not the subject of a referral from the Agency: "Since nothing in the record indicates that the Agency referred the violations contained in Count II to the Attorney General, Sections 31(a) and (b) do not apply." Slip op. at 7. Consequently, *Eagle-Picher* holds that for claims referred by the Agency to the Attorney General (in this case, all the claims in the State's complaint with the exception of parts of Count III and Count V[1]), the Board is divested of jurisdiction over those claims if the Agency did not comply with Section 31.

Here, too, Aargus asserts that the Agency failed to comply with the pre-complaint notice procedures.[2] "Rules of construction are useful only where there is doubt as to the

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[1] *See* Motion at pp. 10-11 (where the State acknowledges that part of Count III and part of Count V were not included in the Agency's violation notices. By implication, everything else in the complaint was referred by the Agency to the Attorney General.)

[2] Aargus acknowledges that, recently, the Board has altered course and ruled contrary to the position asserted here by Aargus. Aargus respectfully requests the Board to reconsider its prior rulings.

meaning of a statute, and a court may not alter that meaning beyond the clear import of the language employed therein." *Pielet Brothers Trading, Inc. v. Pollution Control Board*, 110 Ill. App. 3d 752, 755, 442 N.E.2d 1374, 1377 (5th Dist. 1982). To accept the State's interpretation of amended Section 31 would ignore the plain language of the statute and the Board's rulings.

Affirmative Defenses Nos. 4 and 5 (*Laches*/Waiver)

Throughout the 1990s, the Agency inspected the Aargus facility and acknowledged that small printers like Aargus had difficulty with the RACT ink content requirements. The Agency encouraged Aargus to experiment with different inks and suppliers, which Aargus did, to come into full compliance with these rules. The Agency assured Aargus that Aargus was making reasonable progress toward compliance and did not instruct Aargus to do anything different. In fact, the Agency has acknowledged that that water-based inks do not represent RACT for small printers like Aargus because compliant inks were not always available and adding pollution control equipment would be economically unreasonable and not technically feasible. *See, e.g., In the Matter of: Petition of Formel Indus. for an Adjusted Standard*, AS 00-13, slip op. at 7 (Jan. 18, 2001). Because of the Agency's statements, the 2002 Violation Notice was a complete surprise to Aargus.

Complainant mistakenly claims that Aargus must demonstrate, in asserting its *laches* and waiver defenses, that it will prevail on the defenses. (Motion p. 7.) Rather, a respondent need only allege "new facts or arguments that, if true, will defeat . . . the government's claim even if all allegations in the complaint are true." *People v. Community Landfill Co.*, PCB 97-193, slip op. at 3 (Aug. 6, 1998).

Here, the *laches* and waiver defenses are clear from the face of the complaint. For example, the State alleges that Aargus violated its air permit from 1994 through 2000, presumably relying on annual emissions information submitted by Aargus. (Cmplt., Count III.) The other counts also contain allegations of which the State has long known, or should have known. Despite having this information (or, at the least, the Agency certainly should have been aware of the alleged violations), the IEPA did not issue a violation notice to Aargus until January 31, 2002.[3] The Agency's unreasonable and unjustified delay in issuing the Violation Notice satisfies the first element of laches. The second element of prejudice is also satisfied because the delay subjects Aargus to greater penalty amounts because the State is seeking per day penalties.

Considering similar facts, the Board has refused to dismiss a *laches* defense. *See, e.g., People v. Peabody Coal. Co.*, PCB 99-134, slip op. at 7-8 (June 5, 2003); *People v. John Crane, Inc.*, PCB 01-76, slip op. at 8 (May 17, 2001). As in *Peabody* and *Crane*, the Board should not decide the merits of the defense before hearing the evidence. The Board should deny the State's motion to strike the *laches* defense.

As to waiver, the Board has held that "waiver applies when a party intentionally relinquishes a known right or his conduct warrants an inference to relinquish that right." *Peabody Coal*, slip op. at 8. Aargus alleges that by inspecting its facility and assuring it that it was taking appropriate action, the State relinquished its right to file an enforcement action against Aargus. As with its *laches* defense, Aargus has been prejudiced because

[3] The Agency also issued a notice on September 13, 2001, regarding only one alleged violation—failure to submit an annual report. (Motion p. 4.) This difference of only a few months between the two violation notices does not help the State's argument as it knew or should have known for years of the violations alleged.

the delay subjects Aargus to greater penalties. As in *Peabody* and *Crane*, the Board should deny the State's motion to strike the waiver defense.

Affirmative Defenses Nos. 6 and 11 (Estoppel)

As Complainant notes, a party asserting estoppel must show "that it relied on a government agency, the reliance was reasonable, and that such reliance led that party to suffer some prejudice." (Motion p. 8.) As in *Peabody* and *Crane*, Aargus will demonstrate that the Agency was aware of the alleged violations for years and that, by waiting until September 2001 and January 2002 to issue violation notices, IEPA intended to relinquish its claims. Aargus will further show that it relied on the Agency's representations that it need do nothing different or additional and that it would suffer prejudice—substantial penalties—if the State is allowed to withdraw those representations. The Board should deny the State's motion to strike the estoppel defense. *Peabody*, slip op. at 9; *Crane*, slip op. at 9.

Affirmative Defenses Nos. 12 and 13 (Improper Notice)[4]

Here, Aargus defends on the basis that certain allegations and alleged violations found in Counts III and V of the complaint were not included in either violation notice issued by the Agency. The State counters by asserting that, "There is no prohibition anywhere in the Act barring the Attorney General from alleging violations against Respondent on her own." (Motion p. 11.)

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[4] Aargus agrees to withdraw defenses Nos. 1, 3, 7, 8, 9 and 10. As to No. 10, however, Aargus wishes to point out that the State confuses the affirmative defense standard—an affirmative defense admits the alleged cause of action, but seeks to avoid it by asserting a new matter—with the motion to dismiss standard, by claiming that that the asserted RACT defense does not address the underlying allegations in the complaint. (Motion p. 10.) The RACT defense does indeed address the complaint's allegations (*see* Cmplt., Count I, ¶¶ 17-23), namely, by asserting that RACT does not apply to Aargus. By withdrawing Defense No. 10, Aargus agrees with the State

The States' position does not respect the language of Section 31 and would render it a nullity. The principles of statutory construction do not allow the State to pick whatever language it deems favorable from Section 31 and discard that which hurts its case. If the State is correct that the Section 31 allows the Attorney General to allege violations not referred by the Agency "on her own," then the State must also accept the provisions of Section 31 that require the Agency to comply with certain requirements, including the 180 day rule, before referring an action to the Attorney General. Thus, the only valid allegations of the complaint are those recited by Affirmative Defenses Nos. 12 and 13.

Respectfully submitted,

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that this is not a true affirmative defense, but rather is an element of the State's case, which the State must prove at hearing.

(e) The Board shall give notice of the petition and shall schedule a hearing in accordance with 35 Ill.Adm.Code 103. The proceedings shall be in accordance with 35 Ill.Adm.Code 103.

(f) In considering the proposed petition and the hearing record, the Board shall take into account the factors contained in subsection (a) of Section 27 of this Act.[1] The Board shall issue and enter a written opinion stating the facts and reasons leading to its decision within 120 days after the filing of the petition. The Board shall issue and enter such orders concerning a petition for an adjusted standard as are appropriate for the reasons stated in its written opinion. Such decisions may include but are not limited to decisions accepting or rejecting the petition, directing that hearings be held to develop further information or to cure any procedural defects, or remanding the petition to the petitioners with suggested revisions. The Board shall also include a compliance schedule for construction of any treatment works, discharge outfall facilities or operational controls that may be required as a result of its final order.

(g) Application of otherwise applicable discharge limitations to discharges subject to this Section shall be held in abeyance pending Board action for those petitioners pursuing an adjusted standard as long as they have adhered to the filing times in this Section and are making timely and appropriate progress in seeking an adjusted standard. Petitioners must take all reasonable steps to minimize discharge quantities and adverse environmental impacts for the interim operating period during pursuit of an adjusted standard. In no instances shall interim operating procedures be relaxed from previously demonstrated and generally attainable performance levels.

P.A. 76-2429, § 28.3, added by P.A. 86-1363, Art. 2, § 2002, eff. Sept. 7, 1990.

Formerly Ill.Rev.Stat.1991, ch. 111 ½, ¶ 1028.3.

[1] 415 ILCS 5/27.

5/29. Review

§ 29. (a) Any person adversely affected or threatened by any rule or regulation of the Board may obtain a determination of the validity or application of such rule or regulation by petition for review under Section 41 of this Act.[1]

(b) Action by the Board in adopting any regulation for which judicial review could have been obtained under Section 41 of this Act shall not be subject to review regarding the regulation's validity or application in any subsequent proceeding under Title VIII, Title IX or Section 40 of this Act.[2]

P.A. 76-2429, § 29, eff. July 1, 1970. Amended by P.A. 85-1048, § 2, eff. Jan. 1, 1989.

Formerly Ill.Rev.Stat.1991, ch. 111 ½, ¶ 1029.

[1] 415 ILCS 5/41.

[2] 415 ILCS 5/30 et seq., 5/35 et seq. or 5/40.

TITLE VIII: ENFORCEMENT

Section

5/30. Investigations

§ 30. The Agency shall cause investigations to be made upon the request of the Board or upon receipt of information concerning an alleged violation of this Act or of any rule or regulation promulgated thereunder, or of any permit granted by the Agency or any term or condition of any such permit, and may cause to be made such other investigations as it shall deem advisable.

P.A. 76-2429, § 30, eff. July 1, 1970. Amended by P.A. 78-862, § 1, eff. Sept. 14, 1973.

Formerly Ill.Rev.Stat.1991, ch. 111 ½, ¶ 1030.

5/31. Complaints

§ 31. (a)(1) If such investigation discloses that a violation may exist, the Agency shall issue and serve upon the person complained against a written notice, together with a formal complaint, which shall specify the provision of this law or the rule or regulation or permit or term or condition thereof under which such person is said to be in violation, and a statement of the manner in, and the extent to which such person is said to violate this law or such rule or regulation or permit or term or condition thereof and shall require the person so complained against to answer the charges of such formal complaint at a hearing before the Board at a time not less than 21 days after the date of notice by the Board, except as provided in Section 34 of this Act.[1] Such complaint shall be accompanied by a notification to the defendant that financing may be available, through the Illinois Environmental Facilities Financing Act,[2] to correct such violation. A copy of such notice of such hearings shall also be sent to any person that has complained to the Agency respecting the respondent within the six months preceding the date of the complaint, and to any person in the county in which the offending activity occurred that has requested notice of enforcement proceedings; 21 days notice of such hearings shall also be published in a newspaper of general circulation in such county. The respondent may file a written answer, and at such hearing the rules prescribed in Sections 32 and 33 of this Act[3] shall apply. In the case of actual or threatened acts outside Illinois contributing to environmental damage in Illinois, the extraterritorial service-of-process provisions of Sections 2-208 and 2-209 of the Code of Civil Procedure[4] shall apply.

With respect to notices served pursuant to this subsection (a)(1) which involve hazardous material or wastes in any manner, the Agency shall annually publish a list of all such notices served. The list shall include the date the investigation commenced, the date notice was sent, the date the matter was referred to the Attorney General, if applicable, and the current status of the matter.

(2) Notwithstanding the provisions of subdivision (1) of this subsection (a), whenever a complaint has been filed on behalf of the Agency or by the People of the State of Illinois, the parties may file with the Board a stipulation and proposal for settlement accompanied by a request for relief from the requirement of a hearing pursuant to subdivision (1). Unless the Board, in its discretion, concludes that a hearing will be held, the Board shall cause

notice of the stipulation, proposal and request for relief to be published and sent in the same manner as is required for hearing pursuant to subdivision (1) of this subsection. The notice shall include a statement that any person may file a written demand for hearing within 21 days after receiving the notice. If any person files a timely written demand for hearing, the Board shall deny the request for relief from a hearing and shall hold a hearing in accordance with the provisions of subdivision (1).

(b) Any person may file with the Board a complaint, meeting the requirements of subsection (a) of this Section, against any person allegedly violating this Act or any rule or regulation thereunder or any permit or term or condition thereof. The complainant shall immediately serve a copy of such complaint upon the person or persons named therein. Unless the Board determines that such complaint is duplicitous or frivolous, it shall schedule a hearing and serve written notice thereof upon the person or persons named therein, in accord with subsection (a) of this Section.

(c) In hearings before the Board under this Title the burden shall be on the Agency or other complainant to show either that the respondent has caused or threatened to cause air or water pollution or that the respondent has violated or threatens to violate any provision of this Act or any rule or regulation of the Board or permit or term or condition thereof. If such proof has been made, the burden shall be on the respondent to show that compliance with the Board's regulations would impose an arbitrary or unreasonable hardship.

(d) Notwithstanding the provisions of subsection (a) of this Section, prior to issuance and service of a written notice and formal complaint under subsection (a) of this Section, the Agency shall issue and serve upon the person complained against a written notice informing such person that the Agency intends to file a formal complaint. Such written notice shall notify the person of the charges alleged and offer the person an opportunity to meet with appropriate agency personnel in an effort to resolve such conflicts which could lead to the filing of a formal complaint. Such meeting shall be held within 30 days of receipt of notice by the person complained against unless the Agency agrees to a postponement, or the person complained against fails to respond to the notice or such person notifies the Agency that he will not appear at a meeting. Nothing in this subsection is intended to preclude the Agency from following the provisions of subsection (a) of this Section after the provisions of this subsection are fulfilled.

(e) The provisions of this Section shall not apply to administrative citation actions commenced under Section 31.1 of this Act.[5]

P.A. 76-2429, § 31, eff. July 1, 1970. Amended by P.A. 78-862, § 1, eff. Sept. 14, 1973; P.A. 81-1444, § 2, eff. Sept. 4, 1980; P.A. 82-269, § 1, eff. Jan. 1, 1982; P.A. 82-783, Art. XI, § 214, eff. July 13, 1982; P.A. 83-1444, § 1, eff. Sept. 16, 1984; P.A. 84-1320, § 30, eff. Sept. 4, 1986; P.A. 87-134, § 1, eff. Aug. 13, 1991.

Formerly Ill.Rev.Stat.1991, ch. 111 ½, ¶ 1031.

[1] 415 ILCS 5/34.

[2] 20 ILCS 3515/1 et seq.

[3] 415 ILCS 5/32 and 5/33.

[4] 735 ILCS 5/2-208.

[5] 415 ILCS 5/31.1.

5/31.1. Administrative citations

§ 31.1. (a) The prohibitions specified in subsec and (q) of Section 21 of this Act[1] shall be enf either by administrative citation under this Secti otherwise provided by this Act.

(b) Whenever Agency personnel or personnel c of local government to which the Agency has dele functions pursuant to subsection (r) of Section 4 Act,[2] on the basis of direct observation, determine person has violated any provision of subsection (p) Section 21 of this Act, the Agency or such unit government may issue and serve an administrative upon such person within not more than 60 days a date of the observed violation. Each such citatio shall be served upon the person named therein person's authorized agent for service of process, a include the following information:

(1) a statement specifying the provisions of su (p) or (q) of Section 21 of which the person was o to be in violation;

(2) a copy of the inspection report in which the or local government recorded the violation, whic shall include the date and time of inspection, and conditions prevailing during the inspection;

(3) the penalty imposed by subdivision (b)(4) of 42[3] for such violation;

(4) instructions for contesting the administrative findings pursuant to this Section, including noti that the person has 35 days within which to file a for review before the Board to contest the admini citation; and

(5) an affidavit by the personnel observing the vi attesting to their material actions and observation

(c) The Agency or unit of local government sha copy of each administrative citation served under tion (b) of this Section with the Board no later t days after the date of service.

(d) (1) If the person named in the administrative fails to petition the Board for review within 35 da the date of service, the Board shall adopt a final which shall include the administrative citation and f of violation as alleged in the citation, and shall imp penalty specified in subdivision (b) (4) of Section 4

(2) If a petition for review is filed before the B contest an administrative citation issued under sub (b) of this Section, the Agency or unit of local gove shall appear as a complainant at a hearing bef Board to be conducted pursuant to Section 32 of thi at a time not less than 21 days after notice of such h has been sent by the Board to the Agency or unit government and the person named in the citation. hearings, the burden of proof shall be on the Age unit of local government. If, based on the reco Board finds that the alleged violation occurred, i adopt a final order which shall include the adminis citation and findings of violation as alleged in the c and shall impose the penalty specified in subdivision of Section 42. However, if the Board finds that the appealing the citation has shown that the violation ed from uncontrollable circumstances, the Boar adopt a final order which makes no finding of violati which imposes no penalty.

(e) Sections 10 through 15 of The Illinois Adminis Procedure Act[5] shall not apply to any adminis citation issued under subsection (b) of this Section.