

ILLINOIS POLLUTION CONTROL BOARD  
September 7, 2006

ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Complainant,	)	
	)	
v.	)	AC 07-4
	)	(IEPA No. 139-06-AC)
FRANK WILHELM,	)	(Administrative Citation)
	)	
Respondent.	)	

ORDER OF THE BOARD (by G.T. Girard):

On July 28, 2006, complainant, the Illinois Environmental Protection Agency (Agency), timely filed an administrative citation against respondent, Frank Wilhelm. *See* 415 ILCS 5/31.1(c) (2004); 35 Ill. Adm. Code 101.300(b), 108.202(c). The administrative citation concerns a site commonly known as “Decatur/Wilhelm” and located in Macon County. For the reasons below, the Board accepts Mr. Wilhelm’s petition to contest the administrative citation.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2004)), an administrative citation is an expedited enforcement action brought before the Board seeking civil penalties that are fixed by statute. Administrative citations may be filed only by the Agency or, if the Agency has delegated the authority, by a unit of local government, and only for limited types of alleged violations at sanitary landfills or unpermitted open dumps. *See* 415 ILCS 5/3.305, 3.445, 21(o), (p), 31.1(c), 42(b)(4), (4-5) (2004); 35 Ill. Adm. Code 108.

In this case, the Agency alleges that Mr. Wilhelm violated Sections 21(p)(1), (4), and (7) of the Act (415 ILCS 5/21(p)(1), (4), (7) (2004)) by causing or allowing the open dumping of waste resulting in, respectively, litter, the deposition of waste in standing or flowing waters, and the deposition of general or clean construction or demolition debris. The Agency asks the Board to impose on Mr. Wilhelm the statutory penalty of \$1,500 for each of the three violations, totaling \$4,500.

As required, the Agency served the administrative citation within “60 days after the date of the observed violation.” 415 ILCS 5/31.1(b) (2004); *see also* 35 Ill. Adm. Code 101.300(c), 108.202(b). On September 1, 2006, Mr. Wilhelm timely filed a petition to contest the administrative citation. *See* 415 ILCS 5/31.1(d) (2004); 35 Ill. Adm. Code 101.300(b), 108.204(b). Mr. Wilhelm claims that he does not own the property described in the administrative citation. Further, Mr. Wilhelm asserts that he did not cause or allow the alleged open dumping, “which, if such occurred as alleged, was the result of uncontrollable circumstances.” Petition at 2; *see* 35 Ill. Adm. Code 108.206.

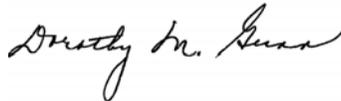
The Board accepts the petition and directs the hearing officer to proceed expeditiously to hearing. The hearing officer will give the parties at least 21 days written notice of the hearing. *See* 35 Ill. Adm. Code 108.300; 415 ILCS 5/31.1(d)(2) (2004). By contesting the administrative citation, Mr. Wilhelm may have to pay the hearing costs of the Board and the Agency. *See* 415 ILCS 5/42(b)(4-5) (2004); 35 Ill. Adm. Code 108.500. A schedule of the Board's hearing costs is available from the Clerk of the Board and on the Board's Web site at [www.ipcb.state.il.us](http://www.ipcb.state.il.us). *See* 35 Ill. Adm. Code 504.

Mr. Wilhelm may withdraw his petition to contest the administrative citation at any time before the Board enters its final decision. If Mr. Wilhelm chooses to withdraw his petition, he must do so in writing, unless he does so orally at hearing. *See* 35 Ill. Adm. Code 108.208. If Mr. Wilhelm withdraws his petition after the hearing starts, the Board will require him 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) (2004); 35 Ill. Adm. Code 108.400. If the Board finds that Mr. Wilhelm violated Sections 21(p)(1), (4), and (7) as alleged, the Board will impose \$4,500 in civil penalties on Mr. Wilhelm. The civil penalty is \$1,500 for each violation of each provision of Section 21(p). *See* 415 ILCS 5/42(b)(4-5) (2004) (the penalty amount increases to \$3,000 per violation for a respondent's second or subsequent adjudicated violation of that provision); 35 Ill. Adm. Code 108.500. However, if the Board finds that Mr. Wilhelm "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) (2004); *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 September 7, 2006, by a vote of 4-0.



Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board