

ILLINOIS POLLUTION CONTROL BOARD
December 6, 2001

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	
)	
v.)	AC 01-42
)	(IEPA No. No. 171-01-AC)
ALAN SMITH,)	(Administrative Citation)
)	
Respondent.)	

ORDER OF THE BOARD (by N.J. Melas):

On May 11, 2001, the Illinois Environmental Protection Agency (Agency) timely filed an administrative citation against Alan Smith (Smith). *See* 415 ILCS 5/31.1(c) (2000); 35 Ill. Adm. Code 108.202(c). The Agency alleges that Smith violated Section 21(p)(3) of the Environmental Protection Act (Act) (415 ILCS 5/21(p)(3) (2000)). The Agency further alleges that Smith violated these provisions by causing or allowing the open dumping of waste in a manner that resulted in open burning at a site located in Urbana, Champaign County.

As required, the Agency served the administrative citation on Smith within “60 days after the date of the observed violation.” 415 ILCS 5/31.1(b) (2000); *see also* 35 Ill. Adm. Code 108.202(b). On June 14, 2001, Smith timely filed a petition to contest the administrative citation. *See* 415 ILCS 5/31.1(d) (2000); 35 Ill. Adm. Code 108.204(b).

On June 21, 2001, the Board issued an order in which it found that Smith’s petition failed to meet several of the requirements of Parts 101 and 108 of the Board’s procedural regulations. 35 Ill. Adm. Code 101, 108. Specifically, Smith failed to include a notice of filing, certificate of service, and notice of appearance in his petition. The Board gave Smith until July 26, 2001, to file an amended petition correcting these deficiencies.

Smith filed an amended petition on July 26, 2001, that corrected the deficiencies in the amended petition. In the amended petition, Smith alleges that he leased the property in question in late 2000 and directed two of his employees to clean up the property. Smith denies that he directed his employees to do any burning and denies that he violated Section 21(p)(3) of the Act. *See* 35 Ill. Adm. Code 108.206. The Board accepts the petition for hearing.

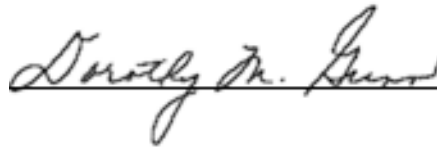
The Board directs the hearing officer to proceed expeditiously to hearing. The hearing officer will give the parties at least 21 days written notice of the hearing. 35 Ill. Adm. Code 108.300; *see also* 415 ILCS 5/31.1(d)(2) (2000). By contesting the administrative citation, Smith may have to pay the hearing costs of the Board and the Agency. *See* 415 ILCS 5/42(b)(4-5) (2000); 35 Ill. Adm. Code 108.500.

Smith may withdraw his petition to contest the administrative citation at any time before the Board enters its final decision. If Smith 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 Smith withdraws his petition after the hearing starts, the Board will require Smith to pay the hearing costs of the Board and the Agency. *See id.* at 108.500(c).

Smith has the burden of proof at hearing. *See* 415 ILCS 5/31.1(d)(2) (2000); 35 Ill. Adm. Code 108.400. If the Board finds that Smith violated Section 21(p)(3) of the Act, the Board will impose civil penalties on Smith. The civil penalty for Section 21(p)(3) is \$1,500 for a first offense and \$3,000 for a second or subsequent offense. 415 ILCS 5/42(b)(4-5) (2000); 35 Ill. Adm. Code 108.500. However, if the Board finds that Smith “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) (2000); *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 December 6, 2001 by a vote of 5-0.

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

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board