

ILLINOIS POLLUTION CONTROL BOARD
February 21, 2002

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	
)	
v.)	AC 02-7
)	(IEPA No. 390-01-AC)
TERRY and LITISHA SPRINGER,)	(Administrative Citation)
)	
Respondents.)	

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

On September 4, 2001, the Illinois Environmental Protection Agency (Agency) timely filed an administrative citation against Terry and Litisha Springer (Springers). *See* 415 ILCS 5/31.1(c) (2000); 35 Ill. Adm. Code 108.202(c). The Agency alleged that the Springers violated Section 21(p)(1) of the Environmental Protection Act (Act) (415 ILCS 5/21(p)(1) (2000)). The Agency further alleged that the Springers violated this provision by causing or allowing open dumping at a facility in Godfrey, Jersey County.

PROCEDURAL HISTORY

The Springers timely filed a petition on October 11, 2001 which was postmarked October 9, 2001. On October 18, 2001, the Board issued an order in which it found that the Springers' 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, the Springers failed to include a notice of filing and certificate of service in their petition. The Springers also failed to sign their petition. The Board gave the Springers until November 22, 2001 to file an amended petition correcting these deficiencies. The Board held that it would issue a default order if the Springers failed to file a timely amended petition.

The Springers failed to file an amended petition by the deadline. On December 6, 2001 the Board issued a default order finding the Springers in violation of Section 21(p)(1) of the Act and assessing a \$1,500 fine. *See* 415 ILCS 5/42(b)(4-5) (2000); 35 Ill. Adm. Code 108.500(a).

On January 8, 2002, the Springers' attorney filed an appearance, a motion to vacate default judgement, motion for reconsideration, and motion to dismiss (mot.) On January 24, 2002, the Agency's attorney filed an appearance and complainant's response to respondents' motion to vacate default judgment, motion for reconsideration, and motion to dismiss (resp.). On February 7, 2002, the Springers filed a motion for leave to file affidavit and respondents' reply to claimant's (sic) response to motion to vacate, motion for reconsideration, and motion to dismiss (reply).

MOTION TO DISMISS/SERVICE OF THE COMPLAINT

The Agency is required to serve an administrative citation 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).

The Springers dispute the Board’s finding in its December 6, 2001 order that the Agency timely served the Springers with the administrative citation. The Agency admits that, at the latest, it served the administrative citation on the Springers on September 4, 2001. Resp. at 2. September 4, 2001 was 61 days after the Agency inspection on July 5, 2001. The Springers cite Section 31.1 of the Act which states that the Agency must serve the administrative citation “within not more than 60 days after the date of the observed violation”.

However, the Agency points out that the Board’s regulations at 35 Ill. Adm. Code 101.300(a) allow deadlines to be extended to the next business day if the deadline falls on a weekend or holiday. Resp. at 4. The Springers claim that the Board regulation at 35 Ill. Adm. Code 101.300(a) allowing exceptions to the 60-day rule is inconsistent with the Act. The Springers ask that that the administrative citation be dismissed because the Agency served it on the Springers 61 days after the inspection. Mot. at 2-3; Reply at 2.

The Agency argues that September 3, 2001 (60 days after July 5, 2001) was Labor Day, a legal holiday. The Agency states that Section 101.300(a) of the Board’s regulations extended the deadline for service to September 4, 2001 and that the Springers’ motion to dismiss should therefore be denied. The Agency also cites a similar provision to Section 101.300(a) at 5 ILCS 70/1.11 (2000). Resp. at 4.

The Springers also claim that the administrative citation could not have been served on September 4, 2001 because it was served on their child and their child would have been in school that day. They also allege that an Agency inspector hand delivered the administrative citation to Terry Springer at least a week after September 4, 2001 but provide no oath or affidavit to back up this allegation. The Springers request that the Agency provide the proof of service to determine the exact date of service. Mot. at 3-4; Reply at 2.

On October 15, 2001, the Agency sent the Board a copy of the proof of service by mail and an affidavit to the Board in October 2001. Resp. at 3. The copy of the proof of service by mail was dated September 1, 2001 and was signed by Sarah Springer. The Agency also submitted an affidavit from Agency field inspector Charlie King in which he stated that he personally hand-delivered a copy of the administrative citation to Terry Springer on September 4, 2001.

Even assuming that the Springers were served on September 4, 2001 as opposed to September 1, 2001, the Board finds that service of the administrative citation on the Springers was timely. Section 101.300(a) of the Board’s procedural regulations clearly extends the service deadline to September 4, 2001 given that September 3, 2001 was a holiday. The Board therefore denies the Springers’ motion to dismiss.

**MOTION FOR RECONSIDERATION/MOTION TO VACATE DEFAULT
JUDGEMENT**

The Springers also claim that they never received the October 18, 2001 Board order directing the Springers to file an amended administrative citation. The Springers did receive the Board's December 6, 2001 default judgment. Mot. at 2.

The Board sent the October 18, 2001 order to the Springers via first class U.S. Mail. The Board has no record of the October 18, 2001 order being returned.

The Springers request that the Board reconsider and vacate the December 6, 2001 default judgment. The Springers also request that the Board dismiss the administrative citation or, in the alternative set the matter for hearing. Mot. at 2; Reply at 2.

The Agency claims that the Springers' motion for reconsideration does not cite newly-discovered evidence, changes in the law, or any Board error in application of existing law. *See* 35 Ill. Adm. Code 101.902; Citizens Against Regional Landfill v. County Board of Whiteside (PCB 92-156), March 11, 1993, slip op. at 2. The Agency also states that facts which the Springers are attempting to introduce are not supported by oath, affidavit, or certification as required by the Board's procedural regulations at 35 Ill. Adm. Code 101.504. As a result, the Agency claims that the Board should deny the motion for reconsideration. Resp. at 3-4. The Springers subsequently filed an affidavit in which they asserted that they never received the Board's October 18, 2001 order.

The Board grants the Springers' motion for leave to file the affidavit. In the interest of fairness to the Springers, the Board grants the Springers' motion for reconsideration. The Board vacates its default judgement and sets the matter for hearing.

DUMPING ON THE PROPERTY

The Springers claim that they had cleaned up their property prior to being served with the administrative citation and also denied that they were responsible for the dumping on their property. They claim that they should be allowed to present this defense. Mot. at 2. The Board agrees. This argument relates to an issue of fact and should be made at hearing.

ORDER

The Board denies the Springers' motion to dismiss the administrative citation. However, the Board grants the Springers' motion for reconsideration and vacates the December 6, 2001 default judgement.

The Board sets this matter 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, the Springers may have to pay the hearing costs of the

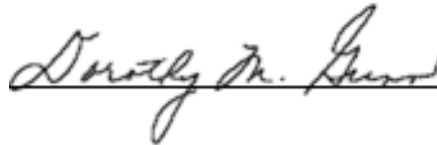
Board and the Agency. *See* 415 ILCS 5/42(b)(4-5) (2000); 35 Ill. Adm. Code 108.500. A schedule of the Board's hearing costs is available at the Board's offices.

The Springers may withdraw its petition to contest the administrative citation at any time before the Board enters its final decision. If the Springers choose to withdraw its petition, they must do so in writing, unless they do so orally at hearing. *See* 35 Ill. Adm. Code 108.208. If the Springers withdraw their petition after the hearing starts, the Board will require the Springers 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) (2000); 35 Ill. Adm. Code 108.400. If the Board finds that the Springers violated Section 21(p)(1) of the Act, the Board will impose civil penalties on the Springers. The civil penalty for violating Section 21(p)(1) 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 the Springers have "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 February 21, 2002, by a vote of 7-0.

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

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board