

ILLINOIS POLLUTION CONTROL BOARD
March 7, 2002

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	
)	
v.)	AC 02-30
)	(IEPA No. 532-01-AC)
CITY OF WENONA,)	(Administrative Citation)
)	
Respondent.)	

ORDER OF THE BOARD (by M.E. Tristano):

On January 7, 2002, the Illinois Environmental Protection Agency (Agency) timely filed an administrative citation against the City of Wenona (City). *See* 415 ILCS 5/31.1(c) (2000); 35 Ill. Adm. Code 108.202(c). The Agency alleges that the City violated Sections 21(p)(1), 21(p)(4), and 21(p)(7) of the Environmental Protection Act (Act) (415 ILCS 5/2 1(p)(1), (p)(4), (p)(7) (2000)). The Agency further alleges that the City violated these provisions by causing or allowing the open dumping of waste in a manner resulting in litter, by causing or allowing the open dumping of waste in a manner resulting in deposition of waste in standing or flowing waters, and by causing or allowing the open dumping of waste in a manner resulting in general and/or clean construction or demolition debris located northwest of Wenona near Interstate 39 and the Wenona Water Treatment Pond, in Marshall County.

As required, the Agency served the administrative citation on the City 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 February 5, 2002, the City timely filed a petition to contest the administrative citation. *See* 415 ILCS 5/31.1(d) (2000); 35 Ill. Adm. Code 108.204(b). The City denies that it caused or allowed the open dumping of waste in a manner resulting in deposition of waste in standing or flowing waters, alleges that the administrative citation filed by the Agency was not timely, and any actions of the City at the site in question are exempted from the definition of “waste” under the Act pursuant to 415 ILCS 5/3.78(a) which exempts clean construction on demolition debris accumulated for use as fill or for erosion control. *See* 35 Ill. Adm. Code 108.206. The Board accepts the petition for hearing.

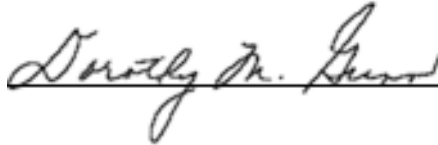
The Board directs the hearing officer to proceed expeditiously to hearing. The hearing officer will give the parties at least 21 days written notice of the hearing. 35 Ill. Adm. Code 108.300; *see also* 415 ILCS 5/31.1(d)(2) (2000). By contesting the administrative citation, the City may have to pay the hearing costs of the Board and 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 and on the Board’s Web site at www.ipcb.state.il.us. 35 Ill. Adm. Code 504.

The City may withdraw its petition to contest the administrative citation at any time before the Board enters its final decision. If the City chooses to withdraw its petition, it must do so in writing, unless it does so orally at hearing. *See* 35 Ill. Adm. Code 108.208. If the City withdraws its petition after the hearing starts, the Board will require the City to pay the hearing costs of the Board and 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 City violated Sections 21(p)(1), 21(p)(4), and 21(p)(7) of the Act, the Board will impose civil penalties on the City. 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 5142(b)(4-5) (2000); 35 Ill. Adm. Code 108.500. However, if the Board finds that the City “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 March 7, 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