

ILLINOIS POLLUTION CONTROL BOARD
August 24, 1995

| | | |
|------------------------|---|---------------------------|
| ILLINOIS ENVIRONMENTAL |) | |
| PROTECTION AGENCY, |) | |
| |) | |
| Complainant, |) | |
| |) | |
| v. |) | AC 96-2 |
| |) | (IEPA No. 405-95-AC) |
| |) | (Administrative Citation) |
| WILLIAM E. HANNA, |) | |
| |) | |
| Respondent. |) | |

Order of the Board (by J. Yi):

On June 28, 1995 the Illinois Environmental Protection Agency (Agency) filed an administrative citation pursuant to Section 31.1 of the Act. (415 ILCS 5/31.1 (1994).) The administrative citation alleges that Mr. William Hanna violated Section 21(o)(1) of the Act by causing or allowing the occurrence of litter at an open dump on his property located in Carroll County, Illinois. (415 ILCS 5/21(o)(1) (1994).) The Clerk of the Board received a letter from Mr. Hanna on July 20, 1995. On August 2, 1995 the Agency filed a motion to dismiss this matter pursuant to Section 31.1 of the Act and 35 Ill. Adm. Code 101.103 and 101.243.

In support of its motion to dismiss the Agency states that Mr. Hanna was served with the administrative citation on July 3, 1995. Furthermore the Agency states that pursuant to Section 31.1(d)(1) if the respondent, Mr. Hanna, fails to petition the Board for review within 35 days from the date of service, the Board shall adopt a final order, finding a violation and impose the civil penalty as set forth in Section 42(b)(4) of the Act. (415 ILCS 5/42(b)(4) (1994).) The Agency argues that the letter from Mr. Hanna, filed on July 20, 1995, does not properly characterize itself as a petition for review and fails to meet the requirements of Section 31.1(d)(1) of the Act and 35 Ill. Adm. Code 101.103(a). The Agency concludes that Mr. Hanna has failed to petition for review within 35 days of service of the administrative citation. Therefore the Agency moves the Board to dismiss the above captioned matter based on Mr. Hanna's failure to file a petition for review which conforms with Section 31.1(d)(1) of the Act. The Board will construe the Agency's request to be a request for the Board to enter a default order against Mr. Hanna.

Mr. Hanna had seven (7) days from service of the motion to respond to the motion to dismiss pursuant to 35 Ill. Adm Code 101.241. On August 11, 1995, Mr. Hanna filed a response to the Agency's motion to dismiss. In the response Mr. Hanna explains

that he did not know the proper procedure because he did not receive the material explaining the proper procedure until he received the motion to dismiss. Mr. Hanna also states in his response that he did respond in writing explaining the efforts that were done to come in compliance.

Although not captioned pursuant to 35 Ill. Adm. Code 101.103(a), the letter filed July 20, 1995 does contain all the necessary information. In addition Mr. Hanna's letter starts out by stating "I am complying in writing regarding the violations that have been brought against me from the Environmental Protection Agency." The Board will construe this statement to be that Mr. Hanna is complying in writing with the requirements of Section 31.1 of the Act and is seeking review of the administrative citation. The Board has construed letters such as this as petitions for review. (See Montgomery County v. Rita Hefley, (October 21, 1993), AC 93-45 and Illinois Environmental Protection Agency v. Gary W. Jacobs, (December 6, 1989), AC 89-237.) Therefore the Board denies the Agency's motion. The Board will allow Mr. Hanna to either pursue this matter at hearing or withdraw the petition for review.

In this type of proceeding before the Board, the respondent has the burden to establish at a formal hearing, by oral testimony under oath or by properly submitted written documents, that the violation did not occur or was the result of uncontrollable circumstances, under the terms of the Act (415 ILCS 5/1 et. seq. (1994)), and applicable regulations. The Board hearing is not an informal informational hearing at which the Agency will explain its actions. The hearing is more in the nature of a court proceeding with testimony under oath and questions of the witnesses. This Board cannot provide legal advice or legal assistance to the respondent.

The initial burden at hearing to explain why the violation should be upheld is upon the Agency pursuant to Section 31.1 (d)(2) of the Act. (415 ILCS 5/31.1(d)(2) (1994).) At hearing, the Agency will provide testimony in support of the alleged violation detailed in the administrative citation. For the Board to uphold the administrative citation, the Agency must show that the alleged facts represent a violation of the provisions of the Act.

In order for the Board to dismiss the administrative citation, the respondent (William Hanna) must present facts and arguments to show that the facts alleged in the administrative citation are inaccurate or that the allegations do not constitute a violation of the provisions of the Act or that the violation resulted from uncontrollable circumstances. A representation that compliance has been achieved (i.e., removal of litter) subsequent to the issuance of the administrative citation is not a defense to a finding of violation. (415 ILCS 5/33 (1992).) The

respondent bears the burden of providing information in an acceptable form to support its position.

To avoid any confusion about what could happen in this case, the Board wishes to make it clear that if a petition for review is allowed to be filed, Sections 31.1 and 42(b)(4) of the Act provide for only two outcomes:


1. The Board can find that there was no violation of Section 21(p) or (q), or that the violation resulted from uncontrolled circumstances. Then, the person filing the petition pays nothing.
2. If the Board finds that a violation did occur, and that there were no uncontrollable circumstances, the person filing the petition pays the fine, plus hearing costs which may accrue in an dollar amount as much as the civil penalty.

If respondent, Mr. Hanna, does not wish to proceed with this matter he may file a motion to dismiss (reference Sections 101.241 and 101.242 of the Board's rules and regulations for filing procedures.) If a motion to dismiss is not received by the Board by October 13, 1995, this matter will be set for hearing.

IT IS SO ORDERED.

Board Member J. Theodore Meyer dissented.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 24th day of August, 1995, by a vote of 6-1.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board