

ILLINOIS POLLUTION CONTROL BOARD
August 5, 1993

ILLINOIS ENVIRONMENTAL))	
PROTECTION AGENCY,)	
)	
Complainant,)	
)	
v.)	AC 93-27
)	(IEPA Docket No. 444-93-AC)
OLIVER A. SMITH,)	(Administrative Citation)
)	
Respondent.)	

ORDER OF THE BOARD (by B. Forcade):

On August 2, 1993, Oliver Smith filed a letter which appears to be in the nature of a petition for review of an Administrative Citation regarding his property located in Macoupin County, Illinois. Attached to the letter from Mr. Smith is a copy of a portion of a handwritten note. The Board cannot determine the relevance of the note to the petition of review. A review of the correspondence filed to date in this matter indicates there may be some confusion as to the nature of a proceeding of this type before the Board.

In this type of proceeding before the Board, the burden is upon the Petitioner (Mr. Smith) 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 Environmental Protection Act, and applicable regulations.

In order to prevail at hearing, the Petitioner must present facts and arguments as to why no violation should be found. 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 Petitioner. The Petitioner bears the burden of providing information to support its position. The initial burden at hearing to explain why the violation should be upheld is not upon the Agency.

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.

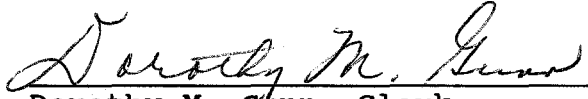
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2. If the Board finds that a violation did occur, and that there were no uncontrollable circumstances, the person filing the petition pays the fine plus hearing costs. Hearing costs usually average from \$200.00 to \$1,000.00, and must be paid in addition to the penalty.

If Petitioner 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 prior to October 15, 1993 this matter will be set for hearing.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 5th day of August, 1993, by a vote of 6-0.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board