

ILLINOIS POLLUTION CONTROL BOARD
September 19, 2002

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	
)	
v.)	AC 03-5
)	(IEPA No. 312-02-AC)
LOXLEY, INC.,)	(Administrative Citation)
)	
Respondent.)	

ORDER OF THE BOARD (by C.A. Manning):

On August 1, 2002, the Illinois Environmental Protection Agency (Agency) timely filed an administrative citation against Loxley, Inc. (Loxley). *See* 415 ILCS 5/31.1(c) (2000); 35 Ill. Adm. Code 108.202(c). The Agency alleges that Loxley violated Sections 21(p)(1), (p)(3), (p)(4), and (p)(7) of the Environmental Protection Act (415 ILCS 5/21(p)(1), (p)(3), (p)(4), (p)(7) (2000) *as amended by* P.A. 92-0574, eff. June 26, 2002). The Agency further alleges that Loxley violated these provisions by causing or allowing the open dumping of waste in a manner resulting in litter, open burning, deposition of waste in standing or flowing waters, and deposition of construction or demolition debris at a facility located on the east side of the southern end of Oak Grove Court in Beardstown, Cass County.

As required, the Agency served the administrative citation on Loxley 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 September 3, 2002, Loxley timely filed a petition to contest the administrative citation. *See* 415 ILCS 5/31.1(d) (2000); 35 Ill. Adm. Code 108.204(b). Loxley alleges that it did not cause or allow the alleged violations, it does not own a portion of the property in question, it was not properly served, and the alleged violations were the result of uncontrollable circumstances. *See* 35 Ill. Adm. Code 108.206. The Board accepts the petition for hearing.

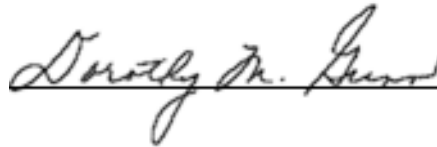
The Board directs the hearing officer to proceed expeditiously to hearing. The hearing officer will give the parties at least 21 days written notice of the hearing. 35 Ill. Adm. Code 108.300; *see also* 415 ILCS 5/31.1(d)(2) (2000). By contesting the administrative citation, Loxley may have to pay the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

Loxley may withdraw its petition to contest the administrative citation at any time before the Board enters its final decision. If Loxley 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 Loxley withdraws its petition after the hearing starts, the Board will require Loxley 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 Loxley violated Sections 21(p)(1), (p)(3), (p)(4), and (p)(7), the Board will impose civil penalties on Loxley. 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 5/42(b)(4-5) (2000); 35 Ill. Adm. Code 108.500. However, if the Board finds that Loxley “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 September 19, 2002, by a vote of 7-0.

A handwritten signature in cursive script that reads "Dorothy M. Gunn". The signature is written in black ink and is positioned above a solid horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board