

ILLINOIS POLLUTION CONTROL BOARD
September 2, 2004

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| ILLINOIS ENVIRONMENTAL |) | |
| PROTECTION AGENCY, |) | |
| |) | |
| Complainant, |) | |
| |) | |
| v. |) | AC 05-8 |
| |) | (IEPA No. 330-04-AC) |
| TED HARRISON and GERALD S. GILL, |) | (Administrative Citation) |
| |) | |
| Respondents. |) | |

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

On July 19, 2004, the Illinois Environmental Protection Agency (Agency) timely filed an administrative citation against Mr. Ted Harrison and Mr. Gerald S. Gill (respondents). *See* 415 ILCS 5/31.1(c) (2002); 35 Ill. Adm. Code 108.202(c). The Agency alleges that respondents violated Section 21(p)(1) and (p)(7) of the Environmental Protection Act (415 ILCS 5/21(p)(1) and (p)(7) (2002)). The Agency further alleges that Mr. Harrison and Mr. Gill violated these provisions by causing or allowing the open dumping of waste in a manner that resulted in litter and the deposition of general or clean construction or demolition debris at a soil treatment facility located east of Garner Road in the southeast quarter of Section 35, T. 18 N, R 10 W, in Sangamon Valley Township, Cass County. The site is known as Virginia/Ted Harrison Oil, and designated with Site Code No. 0170255004. Virginia/Ted Harrison Oil was owned formerly by Mr. Harrison and is currently owned by Mr. Gill.

As required, the Agency served the administrative citation on Mr. Harrison and Mr. Gill within “60 days after the date of the observed violation.” 415 ILCS 5/31.1(b) (2002); *see also* 35 Ill. Adm. Code 108.202(b). To contest an administrative citation, a respondent must file a petition with the Board no later than 35 days after being served with the administrative citation. 35 Ill. Adm. Code 108.204(b). On August 23, 2004, Mr. Harrison timely filed a petition to contest the administrative citation. *See* 415 ILCS 5/31.1(d) (2002); 35 Ill. Adm. Code 108.204(b). In his petition, Mr. Harrison alleges that he did not cause or allow the alleged violations. *See* 35 Ill. Adm. Code 108.206. The Board accepts Mr. Harrison’s petition for hearing.

On August 25, 2004, Mr. Gill timely filed a petition to contest the administrative citation, as the petition was sent by certified mail on August 20, 2004. *See* 415 ILCS 5/31.1(d) (2002); 35 Ill. Adm. Code 108.204(b). In his petition, Mr. Gill also alleges that he did not cause or allow the alleged violations and that he has progressively attempted to remediate the site since he acquired possession of the site in 2002. *See* 35 Ill. Adm. Code 108.206. The Board accepts Mr. Gill’s petition for hearing.

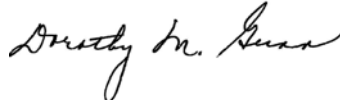
The Board directs the hearing officer to proceed expeditiously to hearing. The hearing officer will give the parties at least 21 days written notice of the hearing. 35 Ill. Adm. Code 108.300; *see also* 415 ILCS 5/31.1(d)(2) (2002). By contesting the administrative citation, the respondents may have to pay the hearing costs of the Board and the Agency. *See* 415 ILCS 5/42(b)(4-5) (2002); 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.

Either respondent may withdraw its petition to contest the administrative citation at any time before the Board enters its final decision. If either respondent chooses to withdraw its petition, he must do so in writing, unless he does so orally at hearing. *See* 35 Ill. Adm. Code 108.208. If either respondent withdraws his petition after the hearing starts, the Board will require him 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) (2002); 35 Ill. Adm. Code 108.400. If the Board finds that respondents violated Section 21(p)(1) or (p)(7), the Board will impose civil penalties on the respondents. 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) (2002); 35 Ill. Adm. Code 108.500. However, if the Board finds that each respondent "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) (2002); *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 2, 2004, by a vote of 5-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board