ILLINOIS POLLUTION CONTROL BOARD October 21, 2004

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)	AC 05-28
)	(County No. 04-02)
)	(Administrative Citation)
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ORDER OF THE BOARD (by A.S. Moore):

On September 27, 2004, the County of Vermilion timely filed an administrative citation against Bill Wernigk. *See* 415 ILCS 5/31.1(c) (2002); 35 Ill. Adm. Code 101.300(b), 108.202(c). The administrative citation concerns Mr. Wernigk's property at 3585 East 3200 North Road in Potomac, Vermilion County. For the reasons below, the Board accepts Mr. Wernigk's petition to contest the administrative citation.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2002)), an administrative citation is an expedited enforcement action brought before the Board seeking civil penalties that are fixed by statute. Administrative citations may be filed only by the Illinois Environmental Protection Agency or, if the Agency has delegated the authority, by a unit of local government, and only for limited types of alleged violations at sanitary landfills or unpermitted open dumps. *See* 415 ILCS 5/3.305, 3.445, 21(o), (p), 31.1(c), 42(b)(4), (4-5) (2002); 35 Ill. Adm. Code 108.

In this case, the County of Vermilion (County) alleges that Mr. Wernigk violated Sections 21(p)(1) and (7) of the Act (415 ILCS 5/21(p)(1), (7) (2002)) by causing or allowing the open dumping of waste resulting in litter and the deposition general and clean construction and demolition debris at Mr. Wernigk's property. The County asks the Board to impose on Mr. Wernigk the statutory civil penalty of \$3,000 for each alleged violation, each of which is allegedly a subsequent violation by Mr. Wernigk, for a total civil penalty of \$6,000.

As required, the County served the administrative citation on Mr. Wernigk within "60 days after the date of the observed violation." 415 ILCS 5/31.1(b) (2002); see also 35 Ill. Adm. Code 101.300(c), 108.202(b). On October 7, 2004, Mr. Wernigk_timely filed a petition to contest the administrative citation. See 415 ILCS 5/31.1(d) (2002); 35 Ill. Adm. Code 101.300(b), 108.204(b). Mr. Wernigk denies the alleged violations and asserts that materials on his property are to be used or sold, are in the process of being cleaned up, or were dumped by a tenant. See 35 Ill. Adm. Code 108.206. Also within the 35-day appeal period, on October 13, 2004, Mr. Wernigk's attorney filed a supplemental pleading explicitly requesting a hearing.

The Board accepts the petition and 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.

See 415 ILCS 5/31.1(d)(2) (2002); 35 III. Adm. Code 108.300. By contesting the administrative citation, Mr. Wernigk may have to pay the hearing costs of the Board and the County. See 415 ILCS 5/42(b)(4-5) (2002); 35 III. Adm. Code 108.500. A schedule of the Board's hearing costs is available from the Clerk of the Board and on the Board's Web site at www.ipcb.state.il.us. See 35 III. Adm. Code 504.

Mr. Wernigk may withdraw his petition to contest the administrative citation at any time before the Board enters its final decision. If Mr. Wernigk chooses to withdraw his petition, he must do so in writing, unless he does so orally at hearing. *See* 35 Ill. Adm. Code 108.208. If Mr. Wernigk withdraws his petition after the hearing starts, the Board will require Mr. Wernigk to pay the hearing costs of the Board and the County. *See id.* at 108.500(c).

The County 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 Mr. Wernigk violated Sections 21(p)(1) and (7) of the Act, the Board will impose civil penalties on Mr. Wernigk. The civil penalty for violating any provision of Section 21(p) is \$1,500 for each violation of each such provision, except that the civil penalty amount is \$3,000 for each violation of any provision of Section 21(p) that is the person's second or subsequent adjudicated violation of that provision. See 415 ILCS 5/42(b)(4-5) (2002); 35 Ill. Adm. Code 108.500. However, if the Board finds that Mr. Wernigk "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 October 21, 2004, by a vote of 5-0.

Dorothy M. Gunn, Clerk

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Illinois Pollution Control Board