

ILLINOIS POLLUTION CONTROL BOARD
December 2, 2004

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	
)	
v.)	AC 05-33
)	(IEPA No. 538-04-AC)
LEO AND DEBRA HARN,)	(Administrative Citation)
)	
Respondents.)	

ORDER OF THE BOARD (by A.S. Moore):

On October 25, 2004, the Illinois Environmental Protection Agency (Agency) timely filed an administrative citation against Leo and Debra Harn (Harns). *See* 415 ILCS 5/31.1(c) (2002); 35 Ill. Adm. Code 101.300(b), 108.202(c). The administrative citation concerns the Harns' property located at 601 Osborn Street in Bushnell, McDonough County. For the reasons below, the Board accepts the Harns' 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 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 Agency alleges that the Harns violated Sections 21(p)(1) and (p)(7) of the Act (415 ILCS 5/21(p)(1), (p)(7) (2002)) by causing or allowing the open dumping of waste resulting in, respectively, litter and the deposition of general or clean construction or demolition debris at the Harns' McDonough County property. The Agency asks the Board to impose a \$3,000 civil penalty on the Harns.

As required, the Agency served the administrative citation on the Harns 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 November 19, 2004, the Harns 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). The Harns allege that they did not cause the violations to occur and that the violations were the result of uncontrollable circumstances. *See* 35 Ill. Adm. Code 108.206.

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* 35 Ill. Adm. Code 108.300; 415 ILCS 5/31.1(d)(2) (2002). By contesting the administrative citation, the Harns may have to pay the hearing costs of the Board and the Agency. *See* 415

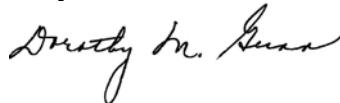
ILCS 5/42(b)(4-5) (2002); 35 Ill. Adm. Code 108.500. A schedule of the Board's hearing costs is available from the Clerk of the Board and on the Board's Web site at www.ipcb.state.il.us. See 35 Ill. Adm. Code 504.

The Harns may withdraw their petition to contest the administrative citation at any time before the Board enters its final decision. If the Harns choose to withdraw their petition, they must do so in writing, unless they do so orally at hearing. See 35 Ill. Adm. Code 108.208. If the Harns withdraw their petition after the hearing starts, the Board will require the Harns 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 the Harns violated Section 21(p)(1) or (p)(7) of the Act, the Board will impose civil penalties on the Harns. 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 the Harns have "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 December 2, 2004, by a vote of 5-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board