

ILLINOIS POLLUTION CONTROL BOARD
March 17, 2005

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	
)	
v.)	AC 05-47
)	(IEPA County No. 686-04-AC)
STACY HESS,)	(Administrative Citation)
)	
Respondent.)	

ORDER OF THE BOARD (by J.P. Novak):

On January 20, 2005, the Illinois Environmental Protection Agency (Agency) timely filed an administrative citation against Mr. Stacy Hess. *See* 415 ILCS 5/31.1(c) (2002); 35 Ill. Adm. Code 108.202(c). The Agency alleges that on December 21, 2004, Mr. Stacy Hess violated Section 21(p)(1), (p)(3), and (p)(7) of the Environmental Protection Act (415 ILCS 5/21(p)(1), (p)(3), and (p)(7) (2002)). The Agency further alleges that Mr. Stacy Hess violated these provisions by causing or allowing the open dumping of waste in a manner that resulted in (1) litter; (2) open burning; and (3) deposition of general construction or demolition debris or clean construction or demolition debris off Route 24 East in Washington, Tazewell County.

As required, the Agency served the administrative citation on Mr. Stacy Hess 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). On February 10, 2005, Mr. Stacy Hess filed a letter stating that he was filing a petition to contest the administrative citation. *See* 415 ILCS 5/31.1(d) (2002); 35 Ill. Adm. Code 108.204(b).

The Board issued an order on February 17, 2005 that accepted this matter as timely filed, pursuant to 35 Ill. Adm. Code 105.404, but finding that the petition did not specify the reasons that Mr. Stacy Hess believes the administrative citation was improperly issued, as required by 35 Ill. Adm. Code 108.206. The Board directed Mr. Stacy Hess to amend its petition for review to include its grounds for appeal within 30 days from the date of this order, before March 19, 2004.

On March 14, 2005, Mr. Stacy Hess filed a letter stating his grounds for appeal of the administrative citation. Mr. Stacy Hess alleges that (1) he has not operated an open dump; (2) he has never caused or allowed open dumping of waste or open burning; (3) he has leased a portion the subject property to a concrete plant that conducts operations on an adjoining property; (4) any open dumping or open burning on the property is from personnel at the concrete plant; and (5) a building on the property collapsed a couple of years ago from heavy snow. *See* 35 Ill. Adm. Code 108.206. The Board accepts the petition for hearing.

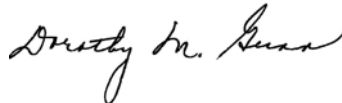
The Board directs the hearing officer to proceed expeditiously to hearing. The hearing officer will give the parties at least 21 days written notice of the hearing. 35 Ill. Adm. Code 108.300; *see also* 415 ILCS 5/31.1(d)(2) (2002). By contesting the administrative citation, Mr. Stacy Hess may have to 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.

Mr. Stacy Hess may withdraw his petition to contest the administrative citation at any time before the Board enters its final decision. If Mr. Stacy Hess 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. Stacy Hess withdraws his petition after the hearing starts, the Board will require Mr. Stacy Hess 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 Mr. Stacy Hess violated Section 21(p)(1), (p)(3), and (p)(7), the Board will impose civil penalties on Mr. Stacy Hess. 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 Mr. Stacy Hess "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 March 17, 2005, by a vote of 5-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board