

ILLINOIS POLLUTION CONTROL BOARD  
June 2, 2005

ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
 )  
Complainant, )  
 )  
v. ) AC 05-61  
 ) (IEPA No. 59-05-AC)  
TIMOTHY PEARCE, ) (Administrative Citation)  
 )  
Respondents. )

ORDER OF THE BOARD (by T.E. Johnson):

On March 28, 2005, the Illinois Environmental Protection Agency (Agency) timely filed an administrative citation against Timothy Pearce (respondent). *See* 415 ILCS 5/31.1(c) (2002); 35 Ill. Adm. Code 108.202(c). On May 19, 2005, the respondent filed a petition to review the administrative citation. For the reasons below, the Board accepts the respondent'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 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, 4(r), 21(o), (p), 31.1, 42(b)(4), (4-5) (2002); 35 Ill. Adm. Code 108.

The Agency alleges that the respondent violated Sections 21(p)(7) of the Act. 415 ILCS 5/21(p)(7) (2002). According to the Agency's administrative citation, the respondent violated this provision of the Act by causing or allowing the open dumping of waste resulting in deposition of construction or demolition debris at a facility located at 241 North Willow Road, Flora in Clay County (site). The Agency asks the Board to impose a \$1,500 civil penalty on the respondent for the alleged violation.

As required, the Agency served the administrative citation on the respondent 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 May 19, 2005, the respondent timely filed a petition to contest the administrative citation. *See* 415 ILCS 5/31.1(d) (2002); 35 Ill. Adm. Code 108.204(b). The respondent states that he did not cause or allow the open dumping of waste, that any materials observed at the site were not waste, and that any materials observed at the site did not constitute deposition of construction or demolition debris. Petition at 1. The Board accepts the petition for hearing.

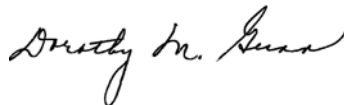
The Board directs the hearing officer to proceed expeditiously to hearing. The hearing officer will give the parties at least 21 days written notice of the hearing. *See* 35 Ill. Adm. Code 108.300; *see also* 415 ILCS 5/31.1(d)(2) (2002). By contesting the administrative citation, the respondent may 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](http://www.ipcb.state.il.us). *See* 35 Ill. Adm. Code 108.504.

The respondent may withdraw the petition to contest the administrative citation at any time before the Board enters its final decision. If the respondent chooses to withdraw the petition, he must do so in writing, unless he does so orally at hearing. *See* 35 Ill. Adm. Code 108.208. If the respondent withdraws his petition after the hearing starts, the Board will require the respondent to pay the hearing costs of the Board and the Agency if the Agency prevails. *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 Agency proved that the respondent violated Section 21(p)(7), the Board will impose civil penalties on the respondent. The civil penalty for violating any provision of Section 21(p) is \$1,500 for each violation of each such provision, except that the penalty amount imposed will be \$3,000 for each violation of any provision of Section 21(p) that is a respondent'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 a 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 June 2, 2005, by a vote of 5-0.



Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board