

ILLINOIS POLLUTION CONTROL BOARD
July 7, 2005

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	
)	
v.)	AC 05-74
)	(IEPA No. 143-05-AC)
RICHARD HOLMES d/b/a RICH'S)	(Administrative Citation)
TOWING, and LINDA HOLMES,)	
)	
Respondents.)	

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

On May 24, 2005, the Illinois Environmental Protection Agency (Agency) timely filed an administrative citation against Richard Holmes, doing business as Rich's Towing, and Linda Holmes (respondents). *See* 415 ILCS 5/31.1(c) (2004); 35 Ill. Adm. Code 108.202(c). The Agency alleged that on March 30, 2005, respondents violated Section 21(p)(1) of the Environmental Protection Act (Act) (415 ILCS 5/21(p)(1) (2004)). The Agency further alleges that respondents violated this provision these provisions by causing or allowing the open dumping of waste in a manner that resulted in litter at 56 Airport Road, Murphysboro, Jackson County.

As required, the Agency served the administrative citation on respondents within "60 days after the date of the observed violation." 415 ILCS 5/31.1(b) (2004); *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. If the respondent fails to do so, the Board must find that the respondent committed the violation alleged and impose the corresponding civil penalty. 415 ILCS 5/31.1(d)(1) (2004); 35 Ill. Adm. Code 108.204(b), 108.406. Here, any petition for review was due on June 27, 2005.

ACCEPT FOR HEARING AS TO LINDA HOLMES

On June 27, 2005, Linda Holmes timely filed a petition to contest the administrative citation. *See* 415 ILCS 5/31.1(d) (2004); 35 Ill. Adm. Code 108.204(b). Linda Holmes alleges she has no interest, possession, or knowledge in the subject of the administrative citation. *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) (2004). By contesting the administrative citation, Linda Holmes may have to pay the hearing costs of the Board and the Agency. *See* 415 ILCS 5/42(b)(4-5) (2004); 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.

Linda Holmes may withdraw her petition to contest the administrative citation at any time before the Board enters its final decision. If Linda Holmes chooses to withdraw her petition, she must do so in writing, unless she does so orally at hearing. *See* 35 Ill. Adm. Code 108.208. If Linda Holmes withdraws her petition after the hearing starts, the Board will require Linda Holmes 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) (2004); 35 Ill. Adm. Code 108.400. If the Board finds that Linda Holmes violated Section 21(p)(1), the Board will impose civil penalties on Linda Holmes. 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) (2004); 35 Ill. Adm. Code 108.500. However, if the Board finds that Linda Holmes "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) (2004); *see also* 35 Ill. Adm. Code 108.500(b).

DEFAULT AS TO RICHARD HOLMES

Richard Holmes failed to timely file a petition. Accordingly, the Board finds that Richard Holmes violated Section 21(p) of the Act.

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) (2004); 35 Ill. Adm. Code 108.500(a). Because there is one violation of Section 21(p) and this violation is a first offense, the total civil penalty is \$1,500. Under Section 31.1(d)(1) of the Act, the Board attaches the administrative citation and makes it part of the order below.

This opinion constitutes the Board's finding of fact and conclusions of law.

ORDER

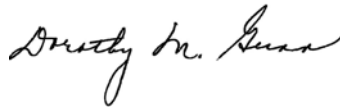
1. The Board finds that Richard Holmes violated Sections 21(p)(1) of the Act as alleged. Richard Holmes must pay a civil penalty of \$1,500 no later than August 8, 2005, which is the first business day after the 30th day after the date of this order.
2. Richard Holmes must pay the civil penalty by certified check or money order, made payable to the Illinois Environmental Protection Trust Fund. The case number, case name, and respondents' social security numbers or federal employer identification numbers must be included on the certified check or money order.
3. Richard Holmes must send the certified check or money order and the remittance form to:

Illinois Environmental Protection Agency
Fiscal Services Division
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

4. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Environmental Protection Act (415 ILCS 5/42(g) (2004)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2004)).
5. Payment of this penalty does not prevent future prosecution if the violation continues.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on July 7, 2005, by a vote of 4-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board