

ILLINOIS POLLUTION CONTROL BOARD
March 16, 2006

COUNTY OF JACKSON,)	
)	
Complainant,)	
)	
v.)	AC 06-21
)	(Jackson County No. 0778035009)
DAN KIMMEL,)	(Administrative Citation)
)	
Respondent.)	

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

On January 30, 2006, the County of Jackson timely filed an administrative citation against Dan Kimmel. *See* 415 ILCS 5/31.1(c) (2004); 35 Ill. Adm. Code 108.202(c). Jackson County alleges that Kimmel violated Sections 21(p)(1) and 21(p)(7) of the Environmental Protection Act (Act) (415 ILCS 5/21(p)(1), 21(p)(7) (2004)). Jackson County further alleges that Kimmel violated these provisions on December 7, 2005, by causing or allowing the open dumping of waste resulting in litter and in the deposition of general construction or demolition debris or clean construction or demolition debris at 1065 Dumaroc Road, DeSoto, Jackson County.

As required, Jackson County served the administrative citation on Kimmel on January 24, 2006, 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). On February 2, 2006, Kimmel timely filed with the Board a letter the Board has construed as a petition to contest the administrative citation. *See* 415 ILCS 5/31.1(d) (2004); 35 Ill. Adm. Code 108.204(b). In an order dated February 16, 2006, the Board accepted Kimmel's petition as timely filed pursuant to 35 Ill. Adm. Code 108.204(b) (setting 35-day deadline for filing).

However, the Board found that the petition did not satisfy the content requirements of the Board's procedural rules because it did not include any reason why Kimmel believes the citation was improperly issued. *See* 35 Ill. Adm. Code 108.206. Accordingly, the Board directed Kimmel to file within 30 days an amended petition specifying the reason or reasons why he believes the citation was improperly issued. The Board's order stated that, if he did not file an amended petition within that deadline, his petition would be dismissed.

On March 10, 2006, Kimmel filed an amended petition (Am. Pet.). While Kimmel admits present ownership of a facility, Kimmel denies the county's allegation that "[t]he facility is an open dump, operating without an Illinois Environmental Protection Agency Operating Permit." Am. Pet. at 1. Kimmel further denies that he "has owned, occupied, controlled and/or operated the facility at all times relevant thereto." *Id.* Finally, Kimmel claims insufficient information to admit or deny allegations relating to an inspection of the facility and "demands straight proof thereof." *Id.* The Board accepts the petition for hearing.

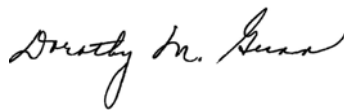
The Board directs the hearing officer to proceed expeditiously to hearing. The hearing officer will give the parties at least 21 days written notice of the hearing. 35 Ill. Adm. Code 108.300; *see also* 415 ILCS 5/31.1(d)(2) (2004). By contesting the administrative citation, Kimmel may have to pay the hearing costs of the Board and Jackson County. *See* 415 ILCS 5/42(b)(4-5) (2004); 35 Ill. Adm. Code 108.500, 108.502, 108.504. 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 108.504.

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

Jackson County 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 Kimmel violated Sections 21(p)(1) and 21(p)(7) of the Act (415 ILCS 5/21(p)(1), 21(p)(7) (2004)), the Board will impose civil penalties on Kimmel. The civil penalty for violating any provision of Section 21(p) is \$1,500 for each violation of each such provision for a first offense and \$3,000 for each violation of each such provision that is 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 Kimmel "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).

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 16, 2006, by a vote of 4-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board