

ILLINOIS POLLUTION CONTROL BOARD
September 21, 2006

COUNTY OF WAYNE,)	
)	
Complainant,)	
)	
v.)	AC 06-55
)	(Site Code 1910405002)
JULIAN BUCHANAN,)	(Administrative Citation)
)	
Respondent.)	

ORDER OF THE BOARD (by G.T. Girard):

For the reasons stated below, the Board grants the September 8, 2006 motion for reconsideration filed by respondent Julian Buchanan. Upon reconsideration, the Board vacates its August 4, 2006 default order, and accepts for hearing Mr. Buchanan's July 24, 2006 petition to contest this administrative citation.

On June 22, 2006, the County of Wayne timely filed an administrative citation against Julian Buchanan. *See* 415 ILCS 5/31.1(c) (2004); 35 Ill. Adm. Code 108.202(c). The County of Wayne alleged that on May 16, 2006, Julian Buchanan violated Section 21(p)(1) of the Environmental Protection Act (Act) (415 ILCS 5/21(p)(1) (2004)). The County of Wayne further alleges that Julian Buchanan violated this provision by causing or allowing the open dumping of waste in a manner that resulted in litter. The alleged violations occurred in Arrington Township, Wayne County.

As required, the County of Wayne served the administrative citation on Julian Buchanan 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 July 24, 2006, Julian Buchanan filed a petition to contest the administrative citation. *See* 415 ILCS 5/31.1(d) (2004); 35 Ill. Adm. Code 108.204(b). Julian Buchanan alleges that the alleged violations were the result of uncontrollable circumstances: debris on the site was what remained of buildings damaged or destroyed by a tornado in April 2002. He further asserts that the remaining debris has since been removed from the site. *See* 35 Ill. Adm. Code 108.206.

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 July 22, 2006. Julian Buchanan filed his petition for review using Federal Express, and the Board received the petition on July 24, 2006.

In its August 4, 2006 default order, the Board found the July 24, 2006 petition untimely. But, as Julian Buchanan points out in his motion for reconsideration, July 22, 2006 was a

Saturday. Since the petition was received on the next following business day, Monday, July 24, the petition was timely filed. See 35 Ill. Adm. Code 101.300(a). The Board accordingly vacates the August 4, 2006 default order.

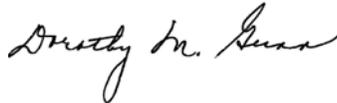
The Board accepts the petition for hearing. The Board directs the hearing officer to proceed expeditiously to hearing, once the service issue has been resolved. The hearing officer will give the parties at least 21 days written notice of the hearing. 35 Ill. Adm. Code 108.300; *see also* 415 ILCS 5/31.1(d)(2) (2004). By contesting the administrative citation, Julian Buchanan may have to pay the hearing costs of the Board and the County of Wayne. *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.

Julian Buchanan may withdraw his petition to contest the administrative citation at any time before the Board enters its final decision. If Mr. Buchanan 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. Buchanan withdraws his petition after the hearing starts, the Board will require Mr. Buchanan to pay the hearing costs of the Board and the County of Wayne. *See id.* at 108.500(c).

The County of Wayne 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 Mr. Buchanan violated Section 21(p)(3) and (p)(7), the Board will impose civil penalties on Mr. Buchanan. 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 Mr. Buchanan "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 September 21, 2006, by a vote of 4-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board