ILLINOIS POLLUTION CONTROL BOARD ADMINISTRATIVE CITATION

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COUTY OF MACON,)	JAN 08 2007
Complainant,)	AC07-21 STATE OF ILLINOIS Pollution Control Board
v .)	(MCSWDMD No. 2006-005-AC)
)	(Administrative Citation)
TIM WALKER,)	
)	
Respondent.)	

NOTICE OF FILING AND CERTIFICATE OF SERVICE

To: Kenneth Boles, Assistant State's Attorney Macon County State's Attorney 253 East Wood Street Decatur, IL 62523

YOU ARE HEREBY NOTIFIED that an AMENDED PETITION TO CONTEST was filed on this date by forwarding the original and nine copies to the Clerk of the Illinois Pollution Control Board.

The undersigned certifies that he forwarded a copy of the AMENDED PETITION FOR REVIEW to: Kenneth Boles, Assistant State's Attorney, Macon County State's Attorney, 253 East Wood Street, Decatur, IL 62523, by placing the document in an envelope, properly addressed and with proper postage affixed, and mailing the envelope at the U.S. Post Office located at Monticello, Illinois, on this 4th day of January, 2007.

David K. Cox Attorney for Respondent Washington Plaza 112 West Washington Street Monticello, IL 61856 217/762-3800

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STATE OF ILLINOIS Pollution Control Board

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COUTY OF MACON

AMENDED PETITION TO CONTEST

NOW COMES the Respondent Tim Walker, by counsel David K. Cox, and pursuant to 415 ILCS 5/31.1, files his AMENDED PETITION TO CONTEST, and in support thereof, states as follows:

1. An administrative citation was issued by the Macon County Solid Waste Management District on October 16, 2006.

2. Pursuant to the Order of the Illinois Pollution Control Board dated December 7, 2006, the Respondent was instructed to file and Amended Petition to Contest addressing the filing date and basis for appeal.

3. The Respondent Tim Walker reported to counsel that the citation was served on him he believes on October 19, 2006. There is no documentation in the possession of the Respondent. Therefore, the Respondent was required to file a Petition for Review on Thursday, November 23, 2006, or on Thanksgiving Day. The certificate of service indicates that the Petition for Review was delivered to the post office on Friday, November 24, 2006, when the post office re-opened after the holiday.

4. The Respondent contests the administrative citation and requests review by the Illinois Pollution Control Board based on the following section 108.206 factors:

A. As an initial matter, the Defendant objects to the allegations advanced in the administrative citation on the basis that the inspectors who conducted the site investigation obtained access to the property illegally, neither by permission nor pursuant to a valid search warrant.

B. There has been no demonstration that any condition on the property presents a threat to the environment of human health.

C. Many of the conditions alleged to exist at the time of the inspection did not exist at the time of the issuance of the administrative citation.

D. Much of the construction materials on the site were being handled as part of ongoing construction projects, and thus are not a violation of the Illinois Environmental Protection Act.

E. The administrative citation addressed natural materials, such as wood chips, the storage and usage of which are not prohibited by the Illinois Environmental Protection Act.

F. The respond did not cause or allow certain alleged violations identified in the inspection reports.

3. Based on the information included in paragraph 2 of Amended Petition for Review, the Respondent has exceeded the standard for proving uncontrollable circumstances in that many of the circumstances are natural or include natural materials, other allegations have not been substantiated or are not violations of the Illinois Environmental Protection Act and therefore are not properly included in an administrative citation, and the Respondent did not cause or allow many of the conditions to exist.

4. The Board should defer review until the process outlined in the administrative citation issued directly to the Respondent by Macon County has been completed.

WHEREFORE, the Respondent requests review of the administrative citation.

TIM WALKER, RESPONDENT

 $\overline{}$ By:

David K. Cox Attorney for Respondent

David K. Cox Attorney for Respondent Washington Plaza 112 West Washington Street Monticello, IL 61856 217/762-3800