

ILLINOIS POLLUTION CONTROL BOARD
November 2, 2006

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	
)	
v.)	AC 07-12
)	(IEPA No. 183-06-AC)
FRANCIS E. MORRIS,)	(Administrative Citation)
)	
Respondent.)	

ORDER OF THE BOARD (by N.J. Melas):

On August 31, 2006, the Illinois Environmental Protection Agency (Agency) timely filed an administrative citation against Mr. Francis E. Morris. *See* 415 ILCS 5/31.1(c) (2004); 35 Ill. Adm. Code 108.202(c). The Agency alleges that Mr. Morris violated Sections 21(p)(1), (3), (4), and (7) of the Environmental Protection Act (Act) (415 ILCS 5/21(p)(1), (3), (4), and (7) (2004)). The Agency further alleges that Mr. Morris violated these provisions by causing or allowing the open dumping of waste in a matter resulting in: (1) litter; (2) open burning; (3) the deposition of waste in standing or flowing waters; and (4) the deposition of general or clean construction or demolition debris at a facility located at 22595 Vineyard Road in Omaha, Gallatin County. Today the Board denies Mr. Morris' motion to dismiss and accepts the petition for hearing.

As required, the Agency served the administrative citation on Mr. Morris 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 September 29, 2006, a timely filed a petition to contest the administrative citation was filed by his agent, Mrs. Bertha Ann Morris, and counsel. *See* 415 ILCS 5/31.1(d) (2004); 35 Ill. Adm. Code 108.204(b). Mr. Morris alleges that he owns, but does not occupy or control the facility. *See* 35 Ill. Adm. Code 108.206.

MOTION TO DISMISS

Mr. Morris' motion to dismiss states the Board should dismiss the administrative citation because Mr. Morris, while the property owner, does not occupy the facility and did not commit any of the acts described in the petition. The motion states Mr. Morris is 81 years old and suffers from substantial physical disabilities.

Under the Board's procedural rules, Mr. Morris' motion was timely filed within 30 days after he was served with the complaint. 35 Ill. Adm. Code 101.506. The Board's procedural rules also provide that the Board may issue an order granting a respondent's motion to dismiss and closing the docket if the administrative citation was not timely and properly served pursuant

to Section 31.1 of the Act and Section 108.200 of the Board's procedural rules. 35 Ill. Adm. Code 108.402.

Mr. Morris does not challenge how the administrative citation was served, whether it was timely, or that the materials as described in the Agency's inspection report existed on the property. Rather, Mr. Morris admits he owns, but does not possess, the facility. Because Mr. Morris' motion does not attack the sufficiency of the administrative citation, the Board denies Mr. Morris' motion to dismiss. The parties will be given the opportunity to raise this issue at hearing.

ACCEPT FOR HEARING

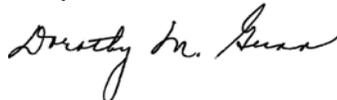
The Board accepts the petition for review and directs the hearing officer to proceed expeditiously to hearing. The hearing officer will give the parties at least 21 days written notice of the hearing. 35 Ill. Adm. Code 108.300; *see also* 415 ILCS 5/31.1(d)(2) (2004). By contesting the administrative citation, Mr. Morris 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.

Mr. Morris may withdraw his petition to contest the administrative citation at any time before the Board enters its final decision. If Mr. Morris 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 Mr. Morris withdraws its petition after the hearing starts, the Board will require Mr. Morris to pay the hearing costs of the Board and Mr. Morris. *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 Mr. Morris violated Sections 21(p)(1), (3), (4), and (7) of the Act, the Board will impose civil penalties on Mr. Morris. 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. Morris "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 November 2, 2006, by a vote of 4-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board