

ILLINOIS POLLUTION CONTROL BOARD
January 9, 2003

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	
)	
v.)	AC 03-13
)	(IEPA No. 565-02-AC)
DAN CADWALLADER,)	(Administrative Citation)
)	
Respondent.)	

ORDER OF THE BOARD (by T. E. Johnson):

On November 18, 2002, the Illinois Environmental Protection Agency (Agency) timely filed an administrative citation against Dan Cadwallader (Cadwallader). *See* 415 ILCS 5/31.1(c) (2000); 35 Ill. Adm. Code 108.202(c). Administrative citations are filed by the Agency or a delegated unit of local government with administrative citation authority. The administrative citation is structured to allow quick response for specific violations at sanitary landfills and open dumps. The alleged violator may contest the administrative citation by filing a petition for a hearing. In this instance, Cadwallader filed a petition seeking a hearing. The Board accepts the petition for hearing.

The Agency alleges that Cadwallader violated Section 21(p)(1) of the Environmental Protection Act (415 ILCS 5/21(p)(1) (2000), *amended by* P.A. 92-0574, eff. June 26, 2002). The Agency further alleges that Cadwallader violated these provisions by owning a facility at 610 North School Street, Granville, Putnam County, on which an open dump was operated without a permit.

As required, the Agency served the administrative citation on Cadwallader within “60 days after the date of the observed violation.” 415 ILCS 5/31.1(b) (2000); *see also* 35 Ill. Adm. Code 108.202(b). On December 23, 2002, Cadwallader sent his petition by certified mail to the Board asking the Board to review the Agency’s citation; the petition was received by the Board on December 26, 2002. Because the postmark date precedes the filing deadline date, the petition is deemed timely filed on the postmark date. 35 Ill. Adm. Code 101.300(b)(2). Cadwallader’s petition to contest the administrative citation alleges he did not own the facility at the times specified in the Agency’s administrative citation and that he did not cause or allow open dumping of waste in a manner resulting in litter. *See* 35 Ill. Adm. Code 108.206.

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) (2000). By contesting the administrative citation, Cadwallader may be required to pay the hearing costs of the Board and the Agency. *See* 415 ILCS 5/42(b)(4-5) (2000); 35 Ill. Adm. Code 108.500. A schedule of the Board’s hearing costs

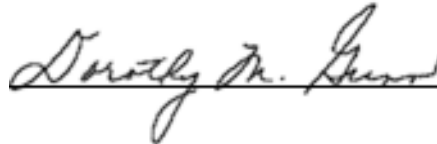
is available at the Board's offices and on the Board's Web site at www.ipcb.state.il.us. 35 Ill. Adm. Code 504.

Cadwallader may withdraw its petition to contest the administrative citation at any time before the Board enters its final decision. If Cadwallader 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 Cadwallader withdraws its petition after the hearing starts, the Board will require Cadwallader 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) (2000); 35 Ill. Adm. Code 108.400. If the Board finds that Cadwallader violated Section 21(p)(1), the Board will impose civil penalties on Cadwallader. 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) (2000); 35 Ill. Adm. Code 108.500. However, if the Board finds that Cadwallader "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) (2000); *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 January 9, 2003, by a vote of 5-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", written over a horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board