

ILLINOIS POLLUTION CONTROL BOARD
November 15, 2001

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	
)	
v.)	AC 02-2
)	(IEPA No. 292-01-AC)
NORDEAN and SUSAN SIMON d/b/a)	(Administrative Citation)
BERMAN'S AUTO PARTS,)	
)	
Respondents.)	

ORDER OF THE BOARD (by C.A. Manning):

On September 24, 2001, the Illinois Environmental Protection Agency (Agency) filed a motion to strike affirmative defenses. On October 9, 2001, respondents filed a response. For the reasons below, the Board denies the motion to strike.

BACKGROUND

Nordean and Susan Simon d/b/a Berman's Auto Parts (respondents) own and operate a site in Belvidere, Boone County at which used or waste tires were allegedly disposed. On July 16, 2001, the Agency filed this administrative citation alleging that respondents violated Section 21(p)(1) of the Environmental Protection Act (Act) by causing or allowing open dumping of waste in a manner that results in litter (415 ILCS 5/21(p)(1) (2000)).

On August 17, 2001, respondents filed a petition for review of the administrative citation pursuant to Section 31.1 of the Act (415 ILCS 5/31.1 (2000)). In the petition for review, respondents raised several defenses. Among other things, respondents assert that the Agency accepted an action plan pursuant to Section 55.3(d) of Act. *See* 415 ILCS 5/55.3(d) (2000). Respondents argue that they were implementing the action plan in good faith and the Agency should be barred from seeking further civil remedies.

On September 24, 2001, the Agency filed a motion to strike affirmative defenses. The Agency's motion primarily argued that its authority to issue notice and take remedial action pursuant to Section 55.3 of the Act is not related to its authority to issue and pursue administrative citations under Section 31.1 of the Act. *See generally* 415 ILCS 5/31.1, 55.3 (2000). Furthermore, the Agency contends, an action plan is not one of the specifically enumerated defenses to an administrative citation set forth in Section 108.206 of the Board's procedural rules, and is not relevant to the administrative citation proceeding. *See* 35 Ill. Adm. Code 108.206.

On October 9, 2001, respondents filed a response to the motion to strike. Respondents assert that the Agency has not presented any citation or case law to support the premise that an action plan executed under Section 55.3 of the Act is not relevant to an administrative citation proceeding. Furthermore, respondents claim, having accepted the petition for review, the Board should allow respondents to address this issue at hearing.

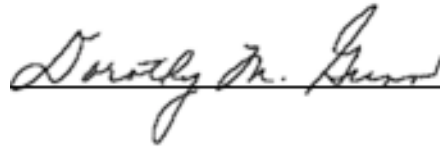
DISCUSSION

The Board denies the Agency's motion to strike respondents' defense that compliance with Section 55.3 of the Act precludes the Agency from pursuing additional penalties. The Agency has not demonstrated sufficient reason to persuade the Board to prohibit respondents from asserting this argument at hearing. The Agency may present further argument or evidence at hearing, and in post-hearing briefs, that compliance with Section 55.3 of the Act is irrelevant to the alleged violation under Section 21(p) of the Act. The Board will consider these arguments when making its final decision in this matter.

IT IS SO ORDERED.

Board Member E.Z. Kezelis dissented.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on November 15, 2001, by a vote of 6-1.

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

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board