

ILLINOIS POLLUTION CONTROL BOARD
October 6, 2011

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	
)	
v.)	AC 11-24
)	(IEPA No. 84-11-AC)
DENNIS HECK and RAYMOND A. &)	(Administrative Citation)
DEANNA HARRIS,)	
)	
Respondent.)	

ORDER OF THE BOARD (by A.S. Moore):

On September 6, 2011, the Board received from respondent Deanna Harris a motion for reconsideration of the default order entered against her by the Board on August 4, 2011. For the reasons described below, the Board grants the motion and on reconsideration vacates the default order and accepts her June 2, 2011 petition for review an administrative citation issued by the Illinois Environmental Protection Agency (Agency). The Board has received no response to the motion.

In this order, the Board first provides the procedural history of this case before summarizing Deanna Harris' motion for reconsideration and then discussing the issues raised in it.

PROCEDURAL HISTORY

On May 6, 2011, the Agency timely filed an administrative citation against three respondents, Dennis Heck and Raymond and Deanna Harris. The Agency alleged that, on March 29, 2011, the three respondents violated Sections 21(p)(1) and 21(p)(7) of Environmental Protection Act (Act) (415 ILCS 5/21(p)(1), 21(p)(7) (2010)) by causing or allowing the open dumping of waste in a manner resulting in litter and in the deposition of general or clean construction demolition debris. Based on the separate dates of service of the citation upon the three respondents, a petition for review was due from Raymond and Deanna Harris on or before June 8, 2011, and from Dennis Heck on or before June 14, 2011.

On June 2, 2011, the Board received a petition for review from Deanna Harris (Harris Pet.). The petition stated in part that "I, Deanna Harris did not cause this violation." Harris Test. at 1; *see* 35 Ill. Adm. Code 108.206(b). On June 6, 2011, the Board received a petition for review from Dennis Heck. In an order dated June 16, 2011, the Board accepted both petitions as timely, found that both were deficient on various grounds, and directed the filing of amended petitions curing the deficiencies on or before July 18, 2011. With regard to the HARRISES, the Board directed them to indicate whether Raymond Harris was joining Deanna Harris' petition for

review and to serve a copy of any amended petition on the Agency. The order stated that, if respondents did not file amended petitions pursuant to the Board's order by that deadline, the petitions would be dismissed and a default order entered against them.

On June 28, 2011, the Agency filed a motion to dismiss Raymond Harris because he had not been properly served. In an order on August 4, 2011, the Board granted the Agency's motion to dismiss Raymond Harris. In the same order, the Board found that Deanna Harris and Dennis Heck had not filed timely amended petition and that they had violated Section 21(p)(1) and (p)(7) of the Act. The Board assessed the statutory penalty of \$3,000.

On September 6, 2011, the Board received from Deanna Harris a petition for reconsideration (Mot. Recon.). The Board has received no response to this filing.

MOTION FOR RECONSIDERATION

In her motion for reconsideration, Deanna Harris states that "[t]he page I accidentally sent to Ms. Michelle Ryan [Agency Assistant Counsel] was attached to my June 28, 2011 Motion to Dismiss Respondent Raymond Harris. I thought when she forward to you that page, that was all that needed to be done." Mot. Recon. at 1. Attached to the motion is a letter dated August 29, 2011, from Deanna Harris to the Board's Clerk. The entire body of the letter states: "Please take notice on this date August 29, 2011 I, Deanna Harris mailed for filing for Petition for Reconsideration, with Illinois Environmental Protection Agency. I sent this to Michelle M. Ryan P.O. Box 19276 Springfield, Il 62794-9276." Mot. Recon. at 5. Deanna Harris also attached to her motion a letter dated August 29, 2011, to Michelle M. Ryan providing notice of filing of a Petition for Reconsideration with the Board's Clerk. Mot. Recon. at 6.

In addition, Deanna Harris enclosed photos taken of the subject property on August 24, 2011. Mot. Recon. at 3-4. She acknowledged that site needed to be mowed. She also stated that the photos demonstrate that a pile of debris had been cleaned up. *Id.* at 1-2.

DISCUSSION

Section 101.500(d) of the Board's procedural rules provides in pertinent part that, "[w]ithin 14 days after service of a motion, a party may file a response to the motion. If no response is filed, the party will be deemed to have waived objection to the granting of the motion, but the waiver of objection does not bind the Board or the hearing officer in its disposition of the motion." 35 Ill. Adm. Code 101.500(d). The Agency has filed no response to Deanna's Harris' motion for reconsideration and has waived objection to the granting of it. The Board grants Deanna Harris' motion for reconsideration and proceeds below to review and discuss it.

As noted above under "Procedural History," the Board on June 16, 2011, directed Deanna Harris to file an amended petition indicating whether Raymond Harris was joining Deanna Harris' petition for review. In its order, the Board noted that, although Deanna Harris could represent herself, she cannot represent another person such as Raymond Harris unless she is an

attorney. *See* 35 Ill. Adm. Code 101.400(a). The Board also directed Deanna Harris to serve an amended petition on the Agency and file proof of service with the Board.

Deanna Harris' motion for reconsideration refers to the July 7, 2011 dismissal of Raymond Harris from this case. The Board construes her motion to argue that, based on this dismissal, she is not obligated to address whether Raymond Harris joins in her petition for review or whether he is appropriately represented under the Board's regulations. Deanna Harris' motion for reconsideration also refers to correspondence with Agency counsel, and she attaches a letter providing the Agency notice of the filing of a motion for reconsideration. The Board construes her motion to argue that, because an amended petition addressing Raymond Harris is no longer necessary, she has provided notice to the Agency.

Having granted Deanna Harris' motion for reconsideration of its August 4, 2011 order, and upon reconsideration, the Board vacates the default order entered August 4, 2011, against Deanna Harris and accepts her June 2, 2011, petition for review.

Having accepted Deanna Harris' petition, 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. *See* 415 ILCS 5/31.1(d)(2) (2010); 35 Ill. Adm. Code 108.300. By contesting the administrative citation, Deanna Harris may have to pay the hearing costs of the Board and the Agency. *See* 415 ILCS 5/42(b)(4-5) (2010); 35 Ill. Adm. Code 108.500. A schedule of the Board's hearing costs is available from the Clerk of the Board and on the Board's Web site at www.ipcb.state.il.us. *See* 35 Ill. Adm. Code 108.504.

Deanna Harris may withdraw her petition to contest the administrative citation at any time before the Board enters its final decision. If Deanna Harris chooses to withdraw her petition, she must do so in writing, unless she does so orally at hearing. *See* 35 Ill. Adm. Code 108.208. If Deanna Harris withdraws her petition after the hearing starts, the Board will require her to pay the hearing costs of the Board and the Agency. *See id.* at 108.500(c).

Deanna Harris has the burden of proof at hearing. *See* 415 ILCS 5/31.1(d)(2) (2010); 35 Ill. Adm. Code 108.400. If the Board finds that Deanna Harris violated Sections 21(p)(1) and (p)(7) of the Act (415 ILCS 5/21(p)(1), (p)(7) (2010)), the Board will impose civil penalties. The civil penalty for violating any provision of Section 21(p) is \$1,500 for each violation, except that the penalty amount is \$3,000 for each violation that is the person's second or subsequent adjudicated violation of that provision. *See* 415 ILCS 5/42(b)(4-5) (2010); 35 Ill. Adm. Code 108.500(a). However, if the Board finds that Deanna Harris "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) (2010); *see also* 35 Ill. Adm. Code 108.500(b).

The Board stresses that, in a July 7, 2011 order, the Board granted the Agency's motion to dismiss Raymond Harris. Consequently, today's order does not concern Mr. Harris. The Board also stresses that Dennis Heck has filed neither a timely amended petition for review of the Agency's citation or a timely motion to reconsider the August 4, 2011, default order against him and finding that he had violated Sections 21(p)(1) and (p)(7) of the Act. Consequently,

today's order in no way affects that finding. However, the Board will stay any order regarding a civil penalty until the final disposition of Deanna Harris' petition for review.

IT IS SO ORDERED.

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on October 6, 2011, by a vote of 5-0.

A handwritten signature in black ink that reads "John T. Therriault". The signature is written in a cursive style with a long horizontal stroke at the end.

John T. Therriault, Assistant Clerk
Illinois Pollution Control Board