

ILLINOIS POLLUTION CONTROL BOARD

March 4, 2004

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	
)	
v.)	AC 04-45
)	(IEPA No. 34-04-AC)
)	(Administrative Citation)
HERBERT LUST d/b/a BEMENT)	
PLUMBING SUPPLY COMPANY and)	
FRANCIS ANN LUST,)	
)	
Respondents.)	

ORDER OF THE BOARD (by J.P. Novak):

On January 30, 2004, the Illinois Environmental Protection Agency (Agency) timely filed an administrative citation against Herbert Lust and Francis Ann Lust (Lusts). See 415 ILCS 5/31.1(c) (2002); 35 Ill. Adm. Code 108.202(c). The Agency alleges that the Lusts violated Section 21(p)(1) and (p)(3) of the Environmental Protection Act (415 ILCS 5/21(p)(1) and (p)(3) (2002)). The Agency further alleges that the Lusts violated these provisions by causing or allowing the open dumping of waste in a manner that resulted in (1) litter, and (2) open burning at 200 W. Franklin Street, Bement, Piatt County.

As required, the Agency served the administrative citation on the Lusts within “60 days after the date of the observed violation.” 415 ILCS 5/31.1(b) (2002); see also 35 Ill. Adm. Code 108.202(b). On February 27, 2004, Herbert Lust timely filed a petition to contest the administrative citation. See 415 ILCS 5/31.1(d) (2002); 35 Ill. Adm. Code 108.204(b). Because the postmark date of the petition is within the time for filing, the petition was timely filed. 35 Ill. Adm. Code 101.300(b)(2). Herbert Lust alleges that the property was not fenced, he was not present at the property to prevent any trespassers from depositing waste on the property, and he obtained the prior approval of the Agency, the local fire chief, and the Mayor before burning cut tree waste on the site. See 35 Ill. Adm. Code 108.206. The Board accepts the petition for hearing.

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) (2002). By contesting the administrative citation, the Lusts may have to pay the hearing costs of the Board and the Agency. See 415 ILCS 5/42(b)(4-5) (2002); 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.

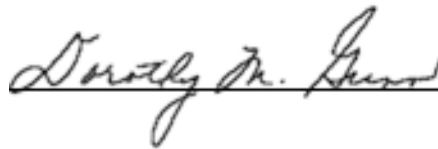
Herbert Lust may withdraw his petition to contest the administrative citation at any time before the Board enters its final decision. If Herbert Lust chooses to withdraw his petition, he

must do so in writing, unless he does so orally at hearing. *See* 35 Ill. Adm. Code 108.208. If Herbert Lust withdraws his petition after the hearing starts, the Board will require Herbert Lust 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) (2002); 35 Ill. Adm. Code 108.400. If the Board finds that the Lusts violated Section 21(p)(1) and (p)(3), the Board will impose civil penalties on the Lusts. 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) (2002); 35 Ill. Adm. Code 108.500. However, if the Board finds that the Lusts “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) (2002); *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 March 4, 2004, 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