

ILLINOIS POLLUTION CONTROL BOARD

July 10, 2003

ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Complainant,	)	
	)	
v.	)	AC 03-32
	)	(IEPA No. 250-03-AC)
SHARYN FULLER and CARL BENEDICT	)	(Administrative Citation)
d/b/a Benedict Auto Sales,	)	
	)	
Respondents.	)	

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

On June 2, 2003, the Illinois Environmental Protection Agency (the Agency) timely filed an administrative citation against Sharyn Fuller and Carl Benedict. *See* 415 ILCS 5/31.1(c) (2002); 35 Ill. Adm. Code 108.202(c). At issue is the Agency's allegation that Sharyn Fuller and Carl Benedict violated Section 21(p)(1) of the Environmental Protection Act. 415 ILCS 5/21(p)(1) (2002). The Agency further alleges that Sharyn Fuller and Carl Benedict violated this provision by causing or allowing open dumping of waste in a manner that resulted in litter at Pottstown Road and Kickapoo Creek Road, Kickapoo Township, Peoria County.

However, the Agency states in a June 16, 2003 motion to dismiss, that it failed to serve the administrative citation on Sharyn Fuller 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). The Board therefore dismisses this case as to Sharon Fuller only. Sharon Fuller's name will not appear in the caption of any future order entered in this case.

As required, the Agency served the administrative citation on Carl Benedict 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 June 30, 2003, Carl Benedict timely filed a petition to contest the administrative citation. *See* 415 ILCS 5/31.1(d) (2002); 35 Ill. Adm. Code 108.204(b). Carl Benedict alleges that he stores vehicles on the property and does not conduct a tire or parts business at the site, that he had no more than 50 to 60 tires on the site, and that he has been removing tires from the property on an ongoing basis. *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, Carl Benedict 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

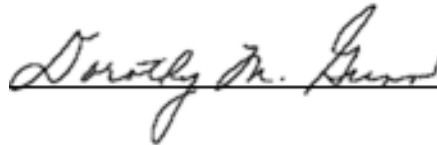
available at the Board's offices and on the Board's Web site at [www.ipcb.state.il.us](http://www.ipcb.state.il.us). 35 Ill. Adm. Code 504.

Carl Benedict may withdraw his petition to contest the administrative citation at any time before the Board enters its final decision. If Carl Benedict 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 Carl Benedict withdraws its petition after the hearing starts, the Board will require Carl Benedict 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 Carl Benedict violated Section 21(p)(1), the Board will impose civil penalties on Carl Benedict. 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 Carl Benedict "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 July 10, 2003, by a vote of 7-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", written in black ink. The signature is fluid and stylized, with the first and last names being more prominent.

Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board