

ILLINOIS POLLUTION CONTROL BOARD
July 8, 2004

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
v.) AC 04-80
) (IEPA No. 271-04-AC)
) (Administrative Citation)
JOSEPH LUPARELL and TROY CURLEY,)
)
Respondents.)

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

On May 27, 2004, the Agency timely filed an administrative citation against Joseph Luparell and Troy Curley (respondents). *See* 415 ILCS 5/31.1(c) (2002); 35 Ill. Adm. Code 108.202(c). The Agency alleges that the respondents violated Section 21(p)(1) of the Environmental Protection Act (415 ILCS 5/21(p)(1) (2002)). The Agency further alleges that the respondents violated these provisions by causing or allowing the open dumping of waste in a manner that resulted in litter at 2193 J. David Jones Parkway, Springfield, Sangamon County.

As required, the Agency served the administrative citation on the respondents 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, 2004, respondent Joseph Luparell addressed a letter to the Clerk of the Board. The letter explains the circumstances of the violation, and attaches receipts evidencing site cleanup.

Attached to the June 30, 2004 letter from Joseph Luparell were a series of documents. There were two handwritten, undated letters addressed “to whom it may concerned,” one from Joseph Luparell and the other from Troy Curley.¹ Also attached are a series of receipts for removal and disposal of various waste materials. A third attached letter is from the Agency and is directed to Mr. Luparell. The Agency letter acknowledges receipt of a letter from Mr. Luparell with attached receipts.

Respondent Luparell

The Board construes the letter as a timely filed petition on the part of Mr. Luparell to contest the administrative citation. *See* 415 ILCS 5/31.1(d) (2002); 35 Ill. Adm. Code 108.204(b). The Board accepts the petition for hearing.

¹ The letter signed by Mr. Curley has an appendix asserting that it was written and signed by Mr. Curley’s ex-wife, Judith Curley. Judith Curley asserts that Troy Curley cannot read or write and that he is on disability.

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, Joseph Luparell 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.

Joseph Luparell may withdraw his petition to contest the administrative citation at any time before the Board enters its final decision. If Joseph Luparell 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 Joseph Luparell withdraws his petition after the hearing starts, the Board will require Joseph Luparell to pay the hearing costs of the Board and the Agency. *See id.* at 108.500(c).

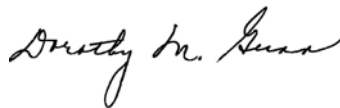
The Agency has the burden of proof at hearing. *See* 415 ILCS 5/31.1(d)(2) (2002); 35 Ill. Adm. Code 108.400. If the Board finds that Joseph Luparell violated Section 21(p)(1), the Board will impose civil penalties on Joseph Luparell. The civil penalty for violating Section 21(p) is \$1,500 for a first 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 Joseph Luparell "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).

Respondent Curley

As to respondent Curley, the only evidence of service of the administrative citation is a certified mail "green card" signed by Judith Curley on May 26, 2004. The Agency is directed to address whether this service on the former Mrs. Curley is sufficient to confer jurisdiction over respondent Troy Curley, her ex-husband. The Agency's filing is due within 21 days of the date of this order, on or before July 29, 2004.

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 8, 2004, by a vote of 5-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board