

ILLINOIS POLLUTION CONTROL BOARD

July 8, 2004

ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Complainant,	)	
	)	
v.	)	AC 04-77
	)	(IEPA No. 265-04-AC)
FRANK BENCIE,	)	(Administrative Citation)
	)	
Respondent.	)	

ORDER OF THE BOARD (by G.T. Girard):

On May 14, 2004, the Illinois Environmental Protection Agency (Agency) timely filed an administrative citation against Frank Bencie. *See* 415 ILCS 5/31.1(c) (2002); 35 Ill. Adm. Code 108.202(c). The Agency alleges that Frank Bencie violated Section 21(p)(1) and (p)(4) of the Environmental Protection Act (415 ILCS 5/21(p)(1) and (p)(4) (2002)). The Agency further alleges that Frank Bencie violated these provisions by causing or allowing the open dumping of waste in a manner that resulted in (1) litter and (2) deposition of waste in standing or flowing waters at 10220 Bencie Land south of West Frankfort, Franklin County.

As required, the Agency served the administrative citation on Frank Bencie 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 15, 2004, Frank Bencie timely filed a petition to contest the administrative citation. *See* 415 ILCS 5/31.1(d) (2002); 35 Ill. Adm. Code 108.204(b). Frank Bencie alleges that he is cleaning the site, but that ongoing mine subsidence on the property, which is beyond his control, is the cause of waste standing in water, and the subsidence makes it impossible to remove all the waste from the site. *See* 35 Ill. Adm. Code 108.206. The Board accepts the petition for hearing.

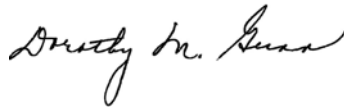
The Board directs the hearing officer to proceed expeditiously to hearing. The hearing officer will give the parties at least 21 days written notice of the hearing. 35 Ill. Adm. Code 108.300; *see also* 415 ILCS 5/31.1(d)(2) (2002). By contesting the administrative citation, Frank Bencie may have to 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.

Frank Bencie may withdraw his petition to contest the administrative citation at any time before the Board enters its final decision. If Frank Bencie 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 Frank Bencie withdraws his petition after the hearing starts, the Board will require Frank Bencie 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 Frank Bencie violated Section 21(p)(1) and (p)(4), the Board will impose civil penalties on Frank Bencie. 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 Frank Bencie “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 8, 2004, by a vote of 5-0.

A handwritten signature in cursive script, appearing to read "Dorothy M. Gunn".

Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board