

ILLINOIS POLLUTION CONTROL BOARD

May 2, 2002

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|------------------------|---|---------------------------|
| ILLINOIS ENVIRONMENTAL |) | |
| PROTECTION AGENCY, |) | |
| |) | |
| Complainant, |) | |
| |) | |
| v. |) | AC 02-43 |
| |) | (IEPA No. 49-02-AC) |
| JAMES POTTER, |) | (Administrative Citation) |
| |) | |
| Respondent. |) | |

ORDER OF THE BOARD (by C.A. Manning):

On March 14, 2002, the Illinois Environmental Protection Agency (Agency) timely filed an administrative citation against James Potter (Potter). *See* 415 ILCS 5/31.1(c) (2000); 35 Ill. Adm. Code 108.202(c). The Agency alleges that Potter violated Sections 21(p)(1) and (p)(3) of the Environmental Protection Act (415 ILCS 5/21(p)(1), (p)(3) (2000)). The Agency further alleges that Potter violated these provisions by causing or allowing the open dumping of waste in a manner resulting in litter and open burning at a facility located on the northwest corner of US 36 and Scotland Road, Prairie Township, Edgar County.

As required, the Agency served the administrative citation on Potter within “60 days after the date of the observed violation.” 415 ILCS 5/31.1(b) (2000); *see also* 35 Ill. Adm. Code 108.202(b). On April 25, 2002, Potter timely filed a petition to contest the administrative citation.¹ *See* 415 ILCS 5/31.1(d) (2000); 35 Ill. Adm. Code 108.204(b). Potter alleges he did not cause or allow the alleged violations. *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) (2000). By contesting the administrative citation, Potter may have to pay the hearing costs of the Board and the Agency. *See* 415 ILCS 5/42(b) (4-5) (2000); 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.

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

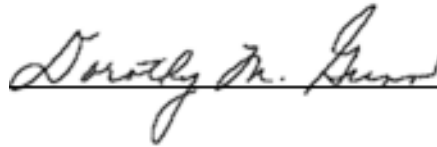
¹ Since the petition for review was postmarked on April 17, 2002, it is timely filed under the mailbox rule. *See* 35 Ill. Adm. Code 101.300(b)(2).

do so in writing, unless he does so orally at hearing. *See* 35 Ill. Adm. Code 108.208. If Potter withdraws his petition after the hearing starts, the Board will require Potter 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) (2000); 35 Ill. Adm. Code 108.400. If the Board finds that Potter violated Sections 21(p)(1) and (p)(3) of the Act, the Board will impose civil penalties on Potter. 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) (2000); 35 Ill. Adm. Code 108.500. However, if the Board finds that Potter “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) (2000); *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 May 2, 2002, by a vote of 7-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", written over a horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board