

ILLINOIS POLLUTION CONTROL BOARD
October 21, 1993

MONTGOMERY COUNTY,)
)
 Complainant,)
)
 v.) AC 93-45
) (Administrative Citation)
 RITA HEFLEY)
)
 Respondent.)

ORDER OF THE BOARD (by B. Forcade):

On October 16, 1993, Rita Hefley filed a letter concerning this administrative citation. The Board construes this letter as a request for hearing to appeal the administrative citation. In this type of proceeding before the Board, the respondent (Rita Hefley) has the burden to establish at a formal hearing, by oral testimony under oath or by properly submitted written documents, that the violation did not occur or was the result of uncontrollable circumstances, under the terms of the Environmental Protection Act (Act) (415 ILCS 5/1 et. seq. (1992)), and applicable regulations.

The Board hearing is not an informal informational hearing at which Montgomery County will explain its actions. The hearing is more in the nature of a court proceeding with testimony under oath and questions of the witnesses. This Board cannot provide legal advice or legal assistance to the respondent.

The initial burden at hearing to explain why the violation should be upheld is upon the complainant (Montgomery County). (415 ILCS 5/31.1(d)(2) (1992).) At hearing, the complainant will provide testimony in support of the alleged violation detailed in the administrative citation. For the Board to uphold the administrative citation, the complainant must show that the alleged facts represent a violation of the provisions of the Act.

In order for the Board to dismiss the administrative citation, the respondent (Rita Hefley) must present facts and arguments to show that the facts alleged in the administrative citation are inaccurate or that the allegations do not constitute a violation of the provisions of the Act or that the violation resulted from uncontrollable circumstances. A representation that compliance has been achieved (i.e. removal of litter) subsequent to the issuance of the administrative citation is not a defense to a finding of violation. (415 ILCS 5/33 (1992).) The respondent bears the burden of providing information in an acceptable form to support its position.

To avoid any confusion about what could happen in this case, the Board wishes to make it clear that if a petition for review

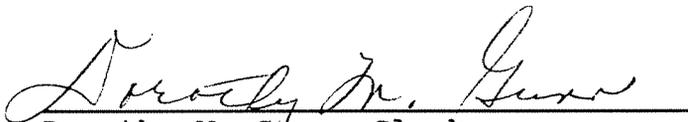
is allowed to be filed, Sections 31.1 and 42(b)(4) of the Act provide for only two outcomes:

1. The Board can find that there was no violation of Section 21(p) or (q), or that the violation resulted from uncontrolled circumstances. Then, the person filing the petition pays nothing.
2. If the Board finds that a violation did occur, and that there were no uncontrollable circumstances, the person filing the petition pays the fine plus hearing costs. Hearing costs usually average from \$200.00 to \$1,000.00, and must be paid in addition to the penalty.

If respondent does not wish to proceed with this matter she may file a motion to dismiss (reference Sections 101.241 and 101.242 of the Board's rules and regulations for filing procedures.) If a motion to dismiss is not received by the Board by December 3, 1993, this matter will be set for hearing.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 21st day of October, 1993, by a vote of 7-0.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board