

ILLINOIS POLLUTION CONTROL BOARD

August 23, 2001

ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Complainant,	)	
	)	
v.	)	AC 02-2
	)	(IEPA No. 292-01-AC)
NORDEAN and SUSAN SIMON d/b/a	)	(Administrative Citation)
BERMAN'S AUTO PARTS,	)	
	)	
Respondents.	)	

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

On July 16, 2001, the Illinois Environmental Protection Agency (Agency) timely filed an administrative citation against Dean and Susan Simon d/b/a Berman Auto Parts. See 415 ILCS 5/31.1(c) (2000); 35 Ill. Adm. Code 108.202 (c). The Agency alleges that the respondents violated Section 21(p)(1) of the Environmental Protection Act (Act). 415 ILCS 5/21(p)(1) (2000). The Agency further alleges that the respondents violated these provisions by causing or allowing the open dumping of waste in a manner resulting in litter at a facility located in Belvidere, Boone County.

On August 17, 2001, respondents filed a petition for review stating that their names were Nordean and Susan Simon d/b/a Berman's Auto Parts.<sup>1</sup>

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) (2000); see also 35 Ill. Adm. Code 108.202(b). On August 17, 2001, the respondents timely filed a petition to contest the administrative citation.<sup>2</sup> See 415 ILCS 5/31.1(d) (2000); 35 Ill. Adm. Code 108.204(b). The respondents allege the citation was wrongfully issued because the Agency accepted an action plan which was being implemented in good faith by the respondents, that the violation occurred as a result of circumstances beyond the control of the respondents, and that the respondents did not cause or allow open dumping as alleged. See 35 Ill. Adm. Code 108.206. The Board accepts the petition for hearing.

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<sup>1</sup> The above caption has been amended to reflect the correct name. All future filings should be so captioned.

<sup>2</sup> On August 17, 2001, the respondents also filed a motion to stay administrative proceedings, which the Board will reserve ruling upon until the motion is ripe.

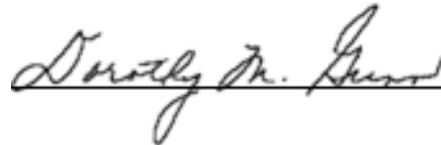
The Board directs the hearing officer to proceed expeditiously to hearing. The hearing officer will give the parties at least 21 days written notice of the hearing. 35 Ill. Adm. Code 108.300; see also 415 ILCS 5/31.1(d)(2) (2000). By contesting the administrative citation, the respondents may have to 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.

The respondents may withdraw their petition to contest the administrative citation at any time before the Board enters its final decision. If the respondents choose to withdraw their petition, they must do so in writing, unless they do so orally at hearing. See 35 Ill. Adm. Code 108.208. If the respondents withdraw their petition after the hearing starts, the Board will require the respondents 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 the respondents violated Section 21(p)(1) of the Act (415 ILCS 5/21(p)(1) (2000)), the Board will impose civil penalties on the respondents. 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 the respondents “have 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, do hereby certify that the above order was adopted on the 23rd day of August 2001 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