ILLINOIS POLLUTION CONTROL BOARD
December 7, 2000

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,	)))	
Complainant,	))	
v.	))	AC 01-5 (IEPA No. 323-00-AC)
BILLY HAMMOND, SR.,	))	(Administrative Citation)
Respondent.	)	

OPINION AND ORDER OF THE BOARD (by M. McFawn):

On July 24, 2000, the Illinois Environmental Protection Agency (Agency) issued an administrative citation to respondent, Billy Hammond, Sr. (Hammond), pursuant to Section 31.1 of the Environmental Protection Act (Act) (415 ILCS 5/31.1 (1998)). The administrative citation alleges that Hammond violated Section 21(p)(1) of the Act, in that he caused or allowed the open dumping of waste in a manner resulting in litter on his property in West City, Franklin County (415 ILCS 5/21(p)(1) (1998)). The administrative citation also alleges that Hammond violated Section 21(p)(7) of the Act, in that he caused or allowed the deposition of general construction or demolition debris, or clean construction or demolition debris (415 ILCS 5/21(p)(7) (1998)).

On August 14, 2000, Hammond filed a petition to review administrative citation, motion to dismiss, answer, and affirmative defense. On September 8, 2000, Hammond filed a motion to add third party respondents and amended answer against third parties.[1] On September 20, 2000, Kenny Abbott and Keith Abbott, by their attorney, filed a response to Hammond's September 8, 2000 motion. Finally, on October 16, 2000, the Agency filed its response to Hammond's September 8, 2000 motion.

MOTION TO DISMISS

Hammond's motion to dismiss presents several theories as to why the Board should dismiss the administrative citation, none of which are supported by any facts. The Board denies Hammond's motion to dismiss, but notes that Hammond is free to present evidence at hearing to support the claims his motion and answer raises.

Hammond makes two other arguments to support his motion. First, Hammond requests a meeting with the Agency to be "held without a representative of the Office of the Attorney General or State's Attorney of Franklin County, Illinois, within 60 days," as provided by Section

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[1] Affidavits of service attached to this motion indicated that the Agency was not served with a copy of this motion.

31(2)(4) (sic) of the Act. Mot. Par. 4.[2] Given this description, the Board concludes that Hammond is seeking a meeting pursuant to Section 31(a)(4) of the Act that addresses enforcement complaints brought by the State. This case involves an administrative citation issued by the Agency pursuant to Section 31.1 of the Act. It is not an enforcement action, and Section 31 is not applicable.

Hammond's second argument is that this action is barred by *res judicata.* Hammond claims that he received an identical administrative citation, but dated April 10, 2000, to which he responded. Copies of both documents are attached to the motion to dismiss. Upon examination, the Board concludes that the administrative citation that Hammond claims to be identical is entitled "Open Dump Administrative Citation Warning Notice" (emphasis added). Furthermore, at page 2 of the "Warning Notice," the recipient is warned that an administrative citation may still be filed before the Board without further notice.   Accordingly, the Board finds that Hammond's *res judicata* argument is without merit.

MOTION TO ADD THIRD PARTY RESPONDENTS

Hammond's September 8, 2000 motion to add third party respondents seeks to have the Board add Kenny Abbott and Keith Abbott d/b/a Abbott's Auto Services (the Abbotts), and the Village of West City, as third-party respondents to this action. Hammond only cites to Section 2(b) of the Act as support of his motion (415 ILCS 5/2(b) (1998)). Hammond cites to no other section in the Act, or to any provision of the Board's regulations, to support his motion.

In their response, the Abbotts state that Hammond's motion "fails to state any sufficient factual scenario as to why [the Abbotts] should be added as a respondent to the complaint filed by [the Agency]." Abb. Resp. Par. 2.[3] The Abbotts also state that "the interests of justice would not be served by allowing Billy Hammond to add [the Abbotts] to this action." *Id.* Par. 4. The City of West Village has not filed any response to Hammond's September 8, 2000 motion.

In its response, the Agency states that:

"Section 31.1 of the [Act], 415 ILCS 5/31.1 (1998), which governs administrative citations, makes no provision for the addition of third parties as respondents to administrative citation actions, nor do the current Illinois Pollution Control Board Procedural Rules." Ag. Resp. Par. 3.[4]

The Agency also states that the Act "only gives authority to the [Agency], or a delegated unit of local government, to issue administrative citations." Ag. resp. par. 4. Finally, the Agency states that Hammond is free to pursue any claims he may have against the Abbotts and/or the City of West Village "independently of this administrative citation action." Ag. Resp. Par. 8.

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[2] Hammond's motion to dismiss will be referred to as "Mot. Par. __."
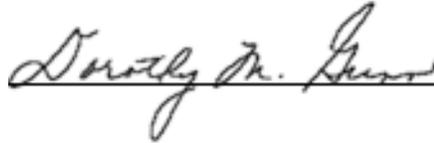[3] The Abbotts' response will be referred to as "Abb. Resp. Par. __."
[4] The Agency's response will be referred to as "Ag. Resp. Par. __."

The Board agrees with the Agency. Nothing in the Act or the Board's procedural rules allow for the addition of third party respondents in administrative citation actions. Hammond has presented no legal basis for the Board to do so, or argued that this action will impede any other action Hammond may have against the Abbotts or the City of West Village.

For the above reasons, the Board denies both Hammond's motion to dismiss, and his motion to add third party respondents. The Board directs the hearing officer to schedule the hearing as expeditiously as practicable.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above opinion and order was adopted on the 7th day of December 2000 by a vote of 7-0.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board