

ILLINOIS POLLUTION CONTROL BOARD
October 2, 2003

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	
)	
v.)	AC 04-08
)	(IEPA No. 392-03-AC)
ROGER RAY,)	(Administrative Citation)
)	
Respondent.)	

ORDER OF THE BOARD (by T.E. Johnson):

On September 19, 2003, the Illinois Environmental Protection Agency (Agency) timely filed an administrative citation against Roger Ray. *See* 415 ILCS 5/31.1(c) (2002); 35 Ill. Adm. Code 108.202(c). At issue is the Agency's allegation that Roger Ray violated Section 21(p)(1) and (p)(3) of the Environmental Protection Act (415 ILCS 5/21(p)(1) and (p)(3) (2002)) (the Act). The Agency further alleges that Roger Ray violated these provisions by causing or allowing the open dumping of waste in a manner that resulted in litter and open burning of waste at the southeast corner of the intersection of County Road 750E and the railroad tracks in Block 3 of the J.W. Evans' Second Addition to Kirksville, Moultrie County.

As required, the Agency served the administrative citation on Roger Ray 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 September 29, 2003, Roger Ray timely filed a petition to contest the administrative citation. *See* 415 ILCS 5/31.1(d) (2002); 35 Ill. Adm. Code 108.204(b). Roger Ray alleges that he does not occupy the subject property, although he does own it, that other persons unknown to him must have committed the acts alleged to have violated the Act, and that he did not discover the acts committed until after he was served with a copy of the administrative citation. *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, Roger Ray 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 <http://www.ipcb.state.il.us>. 35 Ill. Adm. Code 504.

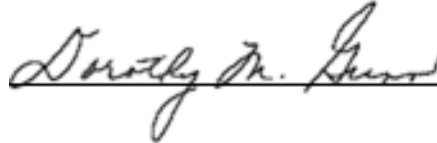
Roger Ray may withdraw his petition to contest the administrative citation at any time before the Board enters its final decision. If Roger Ray chooses to withdraw his petition, he must do so in writing, unless he does so orally at hearing. *See* 35 Ill. Adm. Code 108.208. If

Roger Ray withdraws his petition after the hearing starts, the Board will require Roger Ray 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 Roger Ray violated Section 21(p)(1) and (p)(3) [allegedly violated], the Board will impose civil penalties on Roger Ray. 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 Roger Ray “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 October 2, 2003, by a vote of 7-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", written in black ink. The signature is positioned above a horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board