

ILLINOIS POLLUTION CONTROL BOARD
January 10, 2002

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	
)	
v.)	AC 02-18
)	(IEPA No. 431-01-AC)
BRADNEY LUCKHART,)	(Administrative Citation)
)	
Respondent.)	

ORDER OF THE BOARD (by N.J. Melas):

On October 22, 2001, the Illinois Environmental Protection Agency (Agency) timely filed an administrative citation against Bradney Luckhart (Luckhart). *See* 415 ILCS 5/31.1(c) (2000); 35 Ill. Adm. Code 108.202(c). The Agency alleges that Luckhart violated Sections 21(p)(1), 21(p)(3), and 21(p)(7) of the Environmental Protection Act (415 ILCS 5/21(p)(1), (p)(3), and (p)(7) (2000)). The Agency further alleges that Luckhart violated these provisions by causing or allowing open dumping of waste in a manner resulting in litter, open burning, and deposition of construction or demolition debris at a facility adjacent to Kickapoo Creek in West Lincoln Township, Logan County.

As required, the Agency served the administrative citation on Luckhart 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 November 27, 2001, Luckhart timely filed a petition to contest the administrative citation. *See* 415 ILCS 5/31.1(d) (2000); 35 Ill. Adm. Code 108.204(b). However, in his petition Luckhart failed to include reasons why he believed that the administrative citation was improperly issued. On December 6, 2001, the Board issued an order directing Luckhart to file an amended petition including those reasons within 30 days or the petition would be dismissed. On January 2, 2002, Luckhart filed his amended petition in which he alleged that he did not cause or allow the alleged violations and that the alleged violations were the result of uncontrollable circumstances. *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, Luckhart 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.

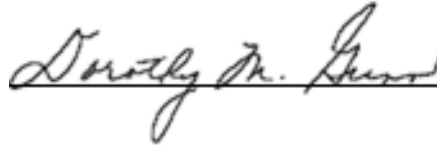
Luckhart may withdraw its petition to contest the administrative citation at any time before the Board enters its final decision. If Luckhart chooses to withdraw its petition, Luckhart must do so in writing, unless he does so orally at hearing. *See* 35 Ill. Adm. Code 108.208. If

Luckhart withdraws its petition after the hearing starts, the Board will require Luckhart 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 Luckhart violated Sections 21(p)(1), 21(p)(3), or 21(p)(7) of the Act, the Board will impose civil penalties on Luckhart. 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 Luckhart “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 January 10, 2002, by a vote of 6-0.

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