

ILLINOIS POLLUTION CONTROL BOARD
August 19, 2004

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	
)	
v.)	AC 05-2
)	(IEPA No. 229-04-AC)
LESTER SMITH,)	(Administrative Citation)
)	
Respondent.)	

ORDER OF THE BOARD (by J.P. Novak):

On July 1, 2004, the Illinois Environmental Protection Agency (Agency) timely filed an administrative citation against Lester Smith. *See* 415 ILCS 5/31.1(c) (2002); 35 Ill. Adm. Code 108.202(c). The Agency alleged that on May 21, 2004, Lester Smith violated Section 21(p)(1) of the Environmental Protection Act (415 ILCS 5/21(p)(1) (2002)) (Act). The Agency further alleges that Lester Smith violated this provision by causing or allowing the open dumping of waste in a manner that resulted in litter at 3913 Upper Salem Road, northwest of Metropolis, in Massac County.

As required, the Agency served the administrative citation on Lester Smith 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 August 17, 2004, Lester Smith timely filed a petition to contest the administrative citation. *See* 415 ILCS 5/31.1(d) (2002); 35 Ill. Adm. Code 108.204(b). Because the postmark date of the petition is within the time for filing, the petition was timely filed. 35 Ill. Adm. Code 101.300(b)(2). Lester Smith alleges that several medical problems over the past two years have hindered cleanup of his residence. *See* 35 Ill. Adm. Code 108.206. The Board accepts the petition for hearing.

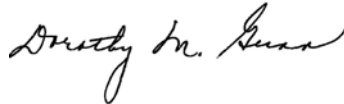
The Board directs the hearing officer to proceed expeditiously to hearing. The hearing officer will give the parties at least 21 days written notice of the hearing. 35 Ill. Adm. Code 108.300; *see also* 415 ILCS 5/31.1(d)(2) (2002). By contesting the administrative citation, Lester Smith may have to pay the hearing costs of the Board and the Agency. *See* 415 ILCS 5/42(b)(4) (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 www.ipcb.state.il.us. 35 Ill. Adm. Code 504.

Lester Smith may withdraw his petition to contest the administrative citation at any time before the Board enters its final decision. If Lester Smith 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 Lester Smith withdraws his petition after the hearing starts, the Board will require Lester Smith 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 Lester Smith violated Section 21(p)(1), the Board will impose civil penalties on Lester Smith. 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 Lester Smith “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 August 19, 2004, by a vote of 4-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board