

ILLINOIS POLLUTION CONTROL BOARD  
September 2, 2004

|                                  |   |                           |
|----------------------------------|---|---------------------------|
| ILLINOIS ENVIRONMENTAL           | ) |                           |
| PROTECTION AGENCY,               | ) |                           |
|                                  | ) |                           |
| Complainant,                     | ) |                           |
|                                  | ) | AC 04-80                  |
| v.                               | ) | (IEPA No. 271-04-AC)      |
|                                  | ) | (Administrative Citation) |
| JOSEPH LUPARELL and TROY CURLEY, | ) |                           |
|                                  | ) |                           |
| Respondents.                     | ) |                           |

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

Today's order finds that the Environmental Protection Agency (Agency) properly served respondent Mr. Troy Curley with an administrative citation and the Board also accepts Mr. Curley's letter, filed on June 30, 2004, as a timely filed petition for review. Accordingly, the Board accepts the petition for hearing, to be held along with hearing on Mr. Luparell's petition. Unless the parties reach a settlement, the Board directs the hearing officer to proceed to hearing as expeditiously as possible.

**PROCEDURAL BACKGROUND**

On May 27, 2004, the Agency timely filed an administrative citation against Mr. Joseph Luparell and Mr. Troy Curley (respondents). *See* 415 ILCS 5/31.1(c) (2002); 35 Ill. Adm. Code 108.202(c). The Agency alleges that the respondents violated Section 21(p)(1) of the Environmental Protection Act (415 ILCS 5/21(p)(1) (2002)). The Agency further alleges that the respondents violated these provisions by causing or allowing the open dumping of waste in a manner that resulted in litter at 2193 J. David Jones Parkway, Springfield, Sangamon County.

On June 1, 2004, the Agency filed copies of the returned certified mail receipts with the Board. Ms. Judith Curley signed the return receipt addressed to Mr. Curley and Ms. Virginia Luparell signed the return receipt addressed to Mr. Luparell. On June 30, 2004, Respondent Mr. Luparell filed a letter addressed to the Clerk of the Board. The letter explains the circumstances of the violation, and attaches receipts evidencing site cleanup.

Attached to the June 30, 2004 letter from Mr. Luparell were a series of documents. Among them were two handwritten, undated letters addressed to "sirs" and "to whom it may concern," from Mr. Luparell and Mr. Curley, respectively. On July 8, 2004, the Board found Mr. Luparell's letter a timely filed petition for review and accepted the petition for hearing. At that time, the Board directed the Agency to address whether service on Mr. Curley's ex-wife is sufficient to confer jurisdiction over respondent Troy Curley. The only evidence of service of the administrative citation is a certified mail "green card" signed by Judith Curley on May 26, 2004.

### **PROPER SERVICE**

The Agency timely responded to the Board's request on August 2, 2004. To its response, the Agency attached an affidavit by Agency inspector Jan Mier who inspected the site that is the subject of this administrative citation. In the affidavit, Inspector Mier states that Mr. Curley lives with his ex-wife and that Mr. Curley affirmed that he received the administrative citation package sent by the Agency via certified mail. The Agency claims that not only did Ms. Curley sign the receipt, but Mr. Curley has not objected to service. The Agency asserts that further evidence of proper service is that Mr. Curley appears to have timely filed a petition for review. The Agency states parenthetically that given Mr. Curley's apparent inability to read or write, the Agency has no objection to the Board accepting the letter hand-written by his ex-wife and filed by Mr. Luparell as a properly filed petition for review. The Agency states that for these reasons, respondent Troy Curley was properly served.

The Board finds that the Agency properly served Mr. Curley. The return receipt for Mr. Curley was signed by a member of his household and Mr. Curley has not objected to service.

The Board next accepts the letter written on behalf of Mr. Curley by his ex-wife as a timely filed petition for review. The letter allegedly written by Mr. Curley's ex-wife provides reasons why he believes the administrative citation was improperly issued including that someone else dumped the used tires, that his means for disposing of the other items on his property had unforeseeably broken down. See 35 Ill. Adm. Code 108.206. The letter also indicates that Mr. Curley cannot read or write and is on disability. In light of these facts, and the fact that the Agency has no objection to finding the hand-written letter a petition for review, the Board accepts the matter for hearing.

Finally, Mr. Luparell filed Mr. Curley's letter with the Board and Mr. Luparell's own handwritten letter includes the term "we," referring to him and Mr. Curley. But the Board reminds the parties that under the Board's procedural rules, Mr. Luparell cannot represent Mr. Curley in this matter. See 35 Ill. Adm. Code 101.400. Mr. Curley must either represent himself or be represented by an attorney.

### **ACCEPT FOR HEARING**

The Board directs the hearing officer to proceed expeditiously to hearing on both Mr. Curley's and Mr. Luparell's petitions. 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, Mr. Curley 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 [www.ipcb.state.il.us](http://www.ipcb.state.il.us). 35 Ill. Adm. Code 504.

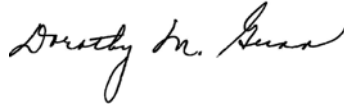
Mr. Curley may withdraw his petition to contest the administrative citation at any time before the Board enters its final decision. If Mr. Curley chooses to withdraw his petition, he must do so in writing, unless he does so orally at hearing. See 35 Ill. Adm. Code 108.208. If Mr.

Curley withdraws his petition after the hearing starts, the Board will require Mr. Curley 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 Mr. Curley violated Section 21(p)(1), the Board will impose civil penalties on Mr. Curley. 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 Mr. Curley “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 September 2, 2004, by a vote of 5-0.

A handwritten signature in black ink, appearing to read "Dorothy M. Gunn", written in a cursive style.

Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board