

ILLINOIS POLLUTION CONTROL BOARD

July 22, 2004

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	
)	
v.)	AC 04-82
)	(IEPA No. 270-04-AC)
)	(Administrative Citation)
JOHN BROWN d/b/a JOHN BROWN)	
PAINTING,)	
)	
Respondent.)	

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

On June 4, 2004, the Illinois Environmental Protection Agency (Agency) timely filed an administrative citation against Mr. John Brown d/b/a John Brown Painting. *See* 415 ILCS 5/31.1(c) (2002); 35 Ill. Adm. Code 108.202(c). The Agency alleges that Mr. Brown violated Section 21(p)(1) and (p)(7) of the Environmental Protection Act (415 ILCS 5/21(p)(1) and (p)(7) (2002)). The Agency further alleges that Mr. Brown violated these provisions by causing or allowing the open dumping of waste in a manner that resulted in (1) litter, and (2) deposition of general or clean construction or demolition debris at 955 Country Club Road, Metropolis, Massac County.

As required, the Agency served the administrative citation on Mr. Brown 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 July 15, 2004, Mr. Brown 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). John Brown alleges that he is cleaning the site, but that standing water is causing the trucks to become stuck in mud, making it impossible to remove all the waste from the site. *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, Mr. Brown 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. 35 Ill. Adm. Code 504.

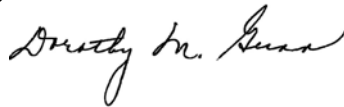
Mr. Brown may withdraw his petition to contest the administrative citation at any time before the Board enters its final decision. If Mr. Brown chooses to withdraw his petition, he must do so in writing, unless he does so orally at hearing. *See* 35 Ill. Adm. Code 108.208. If Mr.

Brown withdraws his petition after the hearing starts, the Board will require Mr. Brown 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. Brown violated Section 21(p)(1) and (p)(7), the Board will impose civil penalties on John Brown. 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. Brown “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 July 22, 2004, by a vote of 5-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn".

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board