

ILLINOIS POLLUTION CONTROL BOARD

July 22, 2004

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	
)	AC 04-84
v.)	(IEPA No. 275-04-AC)
)	(Administrative Citation)
CITY OF SALEM, ROGER KINNEY, DICK)	
BROWN, and JASON BRUCE,)	
)	
Respondents.)	

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

On June 7, 2004, the Illinois Environmental Protection Agency (Agency) timely filed an administrative citation against the City of Salem, Roger Kinney, Dick Brown, and Jason Bruce (respondents). *See* 415 ILCS 5/31.1(c) (2002); 35 Ill. Adm. Code 108.202(c). The Agency alleges that respondents violated Section 21(o)(5) and (o)(12) of the Environmental Protection Act (415 ILCS 5/21(o)(5) and (o)(12) (2002)). The Agency further alleges that respondents violated these provisions by causing or allowing the open dumping of waste in a manner that resulted in (1) uncovered refuse remaining from a previous operating day or at the conclusion of an operating day, and (2) failure to collect and contain litter from the site by the end of the operating day at the Salem Municipal Landfill, 900 East Lake Street, Salem, Marion County.

As required, the Agency served the administrative citation on respondents 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 6, 2004, respondents 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). Respondents deny the alleged violations. *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, respondents 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.

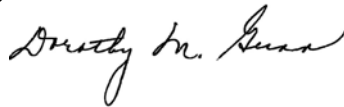
Respondents may withdraw their petition to contest the administrative citation at any time before the Board enters its final decision. If respondents choose to withdraw their petition, they must do so in writing, unless they do so orally at hearing. *See* 35 Ill. Adm. Code 108.208. If

Respondents withdraw their petition after the hearing starts, the Board will require respondents 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 respondents violated Section 21(o)(5) and (o)(12), the Board will impose civil penalties on them. The civil penalty for violating Section 21(o) is \$500 for a first offense and \$1,000 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 respondents “have 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 black ink, appearing to read "Dorothy M. Gunn", written in a cursive style.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board