

ILLINOIS POLLUTION CONTROL BOARD

April 18, 2002

|                        |   |                           |
|------------------------|---|---------------------------|
| ILLINOIS ENVIRONMENTAL | ) |                           |
| PROTECTION AGENCY,     | ) |                           |
|                        | ) |                           |
| Complainant,           | ) |                           |
|                        | ) |                           |
| v.                     | ) | AC 02-39                  |
|                        | ) | (IEPA No. 557-AC)         |
| JEREL CHILDERS,        | ) | (Administrative Citation) |
|                        | ) |                           |
| Respondent.            | ) |                           |

ORDER OF THE BOARD (by T.E. Johnson):

On February 11, 2002, The Illinois Environmental Protection Agency (Agency) timely filed an administrative citation against Jerel Childers (Childers). *See* 415 ILCS 5/31.1(c) (2000); 35 Ill. Adm. Code 108.202(c). The Agency alleges that Childers violated Sections 21(p)(1), (p)(3) and (p)(7) of the Environmental Protection Act. 415 ILCS 5/21(p)(1),(p)(3),(p)(7) (2000). The Agency further alleges that Childers violated these provisions by causing or allowing the open dumping of waste in a manner resulting in litter, open burning and the deposition of construction or demolition debris at a facility located at 748 Mt. Mission Road, Metropolis, Massac County.

As required, the Agency served the administrative citation on Childers 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 March 18, 2002, Childers filed a notice of filing and proof of service indicating that he filed an administrative citation, an affidavit and an open dump inspection checklist with the Board. Also on March 18, 2002, the Agency received eleven copies of a petition for review sent by Childers. On March 25, 2002, the Agency sent a letter to Childers and the Board indicating that the Agency received eleven copies of his petition for review, as well a voice mail message from Childers indicating that he sent some documents to the wrong address. The Agency asserts in the letter that it is up to the Board to determine whether the petition for review should be accepted, and attached the eleven copies of the petition for review to the letter.

A petition to contest an administration citation must be filed within the Board within 35 days after the citation is served. *See* 415 ILCS 5/31.1(d) (2000); 35 Ill. Adm. Code 108.204(b). Childers timely mailed his petition for review, but mistakenly sent the petition to the Agency instead of the Board. As the Agency was timely served with the petition, no material prejudice will result if the Board accepts this matter for hearing. Accordingly, 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

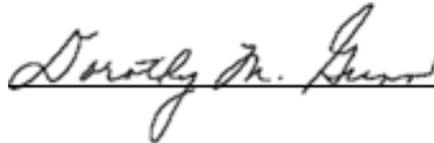
108.300; *see also* 415 ILCS 5/31.1(d)(2) (2000). By contesting the administrative citation, Childers may have to pay the hearing costs of the Board and the Agency. *See* 415 ILCS 5/42(b)(4-5) (2000); 35 Ill. Adm. Code 108.500. A schedule of the Board's hearing costs is available at the Board's offices and on the Board's Web site < [www.ipcb.state.il.us](http://www.ipcb.state.il.us) >. 35 Ill. Adm. Code 504.

Childers may withdraw its petition to contest the administrative citation at any time before the Board enters its final decision. If Childers chooses to withdraw its petition, he must do so in writing, unless he does so orally at hearing. *See* 35 Ill. Adm. Code 108.208. If Childers withdraws its petition after the hearing starts, the Board will require him 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 Childers violated Sections 21(p)(1), (p)(3) and (p)(7) of the Act (415 ILCS 5/21(p)(1),(p)(3),(p)(7) (2000)), the Board will impose civil penalties on Childers. 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 Childers "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 April 18, 2002, by a vote of 6-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", written over a horizontal line.

Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board