

ILLINOIS POLLUTION CONTROL BOARD
December 1, 2005

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| ILLINOIS ENVIRONMENTAL |) | |
| PROTECTION AGENCY, |) | |
| |) | |
| Complainant, |) | |
| |) | |
| v. |) | AC 06-13 |
| |) | (IEPA No. 408-05-AC) |
| LYNDELL HEINZMANN, |) | (Administrative Citation) |
| |) | |
| Respondent. |) | |

ORDER OF THE BOARD (by G.T. Girard):

On October 21, 2005, the Illinois Environmental Protection Agency (Agency) timely filed an administrative citation against Lyndell Heinzmann. *See* 415 ILCS 5/31.1(c) (2004); 35 Ill. Adm. Code 108.202(c). The Agency alleges that Heinzmann violated Sections 21(p)(1), 21(p)(2), and 21(p)(7) of the Environmental Protection Act (Act). 415 ILCS 5/21(p)(1), 21(p)(2), 21(p)(7) (2004). The Agency further alleges that Heinzmann violated these provisions on September 15, 2005 by causing or allowing the open dumping of a waste in a manner resulting in litter, scavenging, and open burning at a facility located on Highway 51 west of the town of Iuka, Marion County.

As required, the Agency served the administrative citation on Heinzmann on October 20, 2005, within "60 days after the date of the observed violation." 415 ILCS 5/31.1(b) (2004); *see also* 35 Ill. Adm. Code 108.202(b). On November 28, 2005, Heinzmann timely filed a petition to contest the administrative citation. *See* 415 ILCS 5/31.1(d) (2004); 35 Ill. Adm. Code 108.204(b). Heinzmann alleges that, when he purchased property in March 2005, it included a dumping area used and left by the previous owner. Heinzmann further alleges that he has been cleaning the property since the date of purchase, that he is not guilty of any violation under Section 21 of the Act (415 ILCS 5/21 (2004)), and that the amount of the fine imposed is arbitrary, capricious, and inappropriate for any violation for which he may be responsible. *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) (2004). By contesting the administrative citation, Heinzmann may have to pay the hearing costs of the Board and the Agency. *See* 415 ILCS 5/42(b)(4-5) (2004); 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. *See* 35 Ill. Adm. Code 108.504.

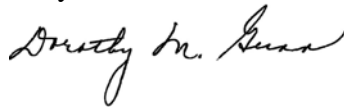
Heinzmann may withdraw his petition to contest the administrative citation at any time before the Board enters its final decision. If Heinzmann chooses to withdraw his petition, he

must do so in writing, unless he does so orally at hearing. *See* 35 Ill. Adm. Code 108.208. If Heinzmann withdraws his petition after the hearing starts, the Board will require Heinzmann to pay the hearing costs of the Board and the Agency. *See* 35 Ill. Adm. Code 108.500(c).

The Agency has the burden of proof at hearing. *See* 415 ILCS 5/31.1(d)(2) (2004); 35 Ill. Adm. Code 108.400. If the Board finds that Heinzmann violated Sections 21(p)(1), 21(p)(2), or 21(p)(7), the Board will impose civil penalties on Heinzmann. The civil penalty is \$1,500 for each violation of each provision of subsection (p) of Section 21 and \$3,000 for each violation of any provision of subsection (p) that is a second or subsequent violation of that provision. 415 ILCS 5/42(b)(4-5) (2004); 35 Ill. Adm. Code 108.500. However, if the Board finds that Heinzmann “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) (2004); *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 December 1, 2005, by a vote of 4-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board