

ILLINOIS POLLUTION CONTROL BOARD
May 18, 2006

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	
)	
v.)	AC 06-33
)	(IEPA No. 61-06-AC)
JOHNNY KEMPER d/b/a KEMPER TREE)	(Administrative Citation)
SERVICE, and JOHNNY KEMPER,)	
)	
Respondent.)	

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

On April 3, 2006, the Illinois Environmental Protection Agency (the Agency) timely filed an administrative citation against Johnny Kemper. *See* 415 ILCS 5/31.1(c) (2004); 35 Ill. Adm. Code 108.202(c). The Agency alleges that on March 1, 2006, Johnny Kemper violated Provisions Section 21(p)(1) and (p)(3) of the Environmental Protection Act (415 ILCS 5/21(p)(1) and (p)(3) (2004)). The Agency further alleges that Johnny Kemper violated these provisions by causing or allowing the open dumping of waste in a manner that resulted in (1) litter and (2) open burning. The alleged violations occurred at a site located in the southeast quarter of Section 35, Tract 14, Range 12 West in the Township of Paris, in Edgar County.

As required, the Agency served the administrative citation on Johnny Kemper 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 May 8, 2006, Johnny Kemper timely filed a petition to contest the administrative citation. *See* 415 ILCS 5/31.1(d) (2004); 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). Johnny Kemper alleges that the alleged violations were the result of uncontrollable circumstances. *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, Johnny Kemper 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. 35 Ill. Adm. Code 504.

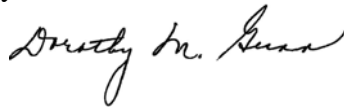
Johnny Kemper may withdraw his petition to contest the administrative citation at any time before the Board enters its final decision. If Johnny Kemper chooses to withdraw his petition, he must do so in writing, unless he does so orally at hearing. *See* 35 Ill. Adm. Code

108.208. If Johnny Kemper withdraws his petition after the hearing starts, the Board will require Johnny Kemper 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) (2004); 35 Ill. Adm. Code 108.400. If the Board finds that Johnny Kemper violated Section 21(p)(1) and (p)(3), the Board will impose civil penalties on Johnny Kemper. 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) (2004); 35 Ill. Adm. Code 108.500. However, if the Board finds that Johnny Kemper “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 May 18, 2006, by a vote of 4-0.

A handwritten signature in cursive script that reads "Dorothy M. Gunn".

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board