

ILLINOIS POLLUTION CONTROL BOARD
July 21, 2008

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	
)	
v.)	AC 08-29
)	(IEPA No. 65-08-AC)
KEISTER’S, INC.,)	(Administrative Citation)
)	
Respondent.)	

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

On May 5, 2008, the Illinois Environmental Protection Agency (Agency) timely filed an administrative citation against Keister’s, Inc. (Keister). *See* 415 ILCS 5/31.1(c) (2006); 35 Ill. Adm. Code 108.202(c). The administrative citation concerns Keister’s facility located at 1348 South Main Street, Monmouth, Warren County, designated with Site Code No. 1878080002, and commonly known to the Agency as “Keister’s, Inc.” Today, for the reasons below, the Board accepts Keister’s amended petition for hearing.

The Agency alleges that Keister violated Sections 21(p)(1) and (p)(3) of the Environmental Protection Act (Act) (415 ILCS 5/21(p)(1), (p)(3) (2006)) by causing or allowing the open dumping of waste in a manner resulting in litter and open burning. The Agency asks the Board to impose on Keister a total civil penalty of \$3,000. On May 29, 2008, Keister filed a petition to contest the administrative citation. On June 5, 2008, the Board issued an order accepting Keister’s petition as timely filed, but finding the petition deficient because it did not provide grounds for contesting the administrative citation. *See* 35 Ill. Adm. Code 108.204(b), 108.206. The Board directed Keister to file an amended petition remedying this deficiency within 30 days, on or before July 7, 2008, or the Board would dismiss the petition and enter a default order against Keister. *See* 35 Ill. Adm. Code 108.404, 108.500(a).

On July 10, 2008, the Board received Keister’s amended petition, which was timely filed because it was postmarked on the July 7, 2008 filing deadline. *See* 35 Ill. Adm. Code 101.300(b)(2). In the amended petition for review, Keister asserts that the alleged violations “were a result of uncontrollable circumstances.” Amended Petition at 1. The Board accepts the amended 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. *See* 35 Ill. Adm. Code 108.300; 415 ILCS 5/31.1(d)(2) (2006). By contesting the administrative citation, Keister may have to pay the hearing costs of the Board and the Agency. *See* 415 ILCS 5/42(b)(4-5) (2006); 35 Ill. Adm. Code 108.500. A schedule of the Board’s hearing costs is available from the Clerk

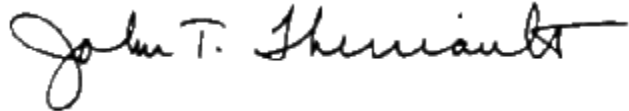
of the Board and on the Board's Web site at www.ipcb.state.il.us. See 35 Ill. Adm. Code 108.504.

Keister may withdraw its petition to contest the administrative citation at any time before the Board enters its final decision. If Keister chooses to withdraw its petition, it must do so in writing, unless it does so orally at hearing. See 35 Ill. Adm. Code 108.208. If Keister withdraws its petition after the hearing starts, the Board will require Keister to pay the hearing costs of the Board and the Agency. See *id.* at 108.500(c).

Keister has the burden of proof at hearing. See 415 ILCS 5/31.1(d)(2) (2006); 35 Ill. Adm. Code 108.400. If the Board finds that Keister violated Section 21(p)(1) or Section 21(p)(3) of the Act (415 ILCS 5/21(p)(1), (p)(3) (2006)), the Board will impose civil penalties. The civil penalty for violating Section 21(p) is \$1,500 for each violation, except that the penalty amount is \$3,000 for each violation that is the person's second or subsequent adjudicated violation of that provision. See 45 ILCS 5/42(b)(4-5) (2006); 35 Ill. Adm. Code 108.500(a). However, if the Board finds that Keister "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) (2006); see also 35 Ill. Adm. Code 108.500(b).

IT IS SO ORDERED.

I, John Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on July 21, 2008, by a vote of 4-0.



John Therriault, Assistant Clerk
Illinois Pollution Control Board