

# Administrative Citation and Enforcement Process

Dustin Burger, Illinois EPA, Field Operations

Adam Poe, Division of Legal Counsel



# Inspector Requirements-Inspection Report

- ▶ Clear, concise
- ▶ Identify all parties and their addresses-include Registered Agent
- ▶ Direct observation, use first person active voice
- ▶ Inspection report
  - ▶ Must include time, date, weather
  - ▶ Color photos
- ▶ Include what provision of 21(o), 21(p) or 55(k)(1) are violated
- ▶ Be mindful of 60-day deadline for service



# Section 31.1 of the Act-Administrative Citations

- ▶ (a) The prohibitions specified in subsections (o) and (p) of Section 21 and subsection (k) of Section 55 of this Act shall be enforceable either by administrative citation under this Section or as otherwise provided by this Act. Violations of Sections 22.38, 22.51, and 22.51a of this Act shall be enforceable either by administrative citation under this Section or as otherwise provided by this Act.

# Section 31.1 of the Act-Administrative Citations

- ▶ (b) Whenever Agency personnel or personnel of a unit of local government to which the Agency has delegated its functions pursuant to subsection (r) of Section 4 of this Act, on the basis of direct observation, determine that any person has violated any provision of subsection (o) or (p) of Section 21, Section 22.38, Section 22.51, Section 22.51a, or subsection (k) of Section 55 of this Act, the Agency or such unit of local government may issue and serve an administrative citation upon such person within not more than 60 days after the date of the observed violation. Each such citation issued shall be served upon the person named therein or such person's authorized agent for service of process, and shall include the following information:



# Section 31.1 of the Act-Administrative Citations

- ▶ A statement specifying the provisions of Subsection (o) or (p) of Section 21, Section 22.38, 22.51, 22.51(a) or 55(k) of which the person was observed to be in violations
- ▶ A copy of the inspection report in which the Agency or unit of local government recorded the violation, which report shall include the date and time of inspection, and weather condition prevailing during the inspection



# Section 31.1-Administrative Citation Packet

- ▶ Inspection report
- ▶ Affidavit--31.1(b)(5)
- ▶ Color Photos
- ▶ Memo to Enforcement Group/Draft AC packet
  - ▶ Include timeline
  - ▶ Include violations
  - ▶ Include penalty amount 31(b)(3)
  - ▶ Instruction on how to contest AC—Include 35-day time limit.  
31(b)(4)



# Administrative Citation

- ▶ Administrative Citation Advantages
  - ▶ Quick
  - ▶ Up to \$1500 per violation is significant
  - ▶ Best for businesses like demo contractors
- ▶ Administrative Citation Disadvantages
  - ▶ Can they pay?—Bad choice for the destitute
  - ▶ Is money better used or cleanup?
  - ▶ No cease-and-desist or clean-up order
  - ▶ Should be a substantial amount of waste



# Violation Notice-Road to Civil Enforcement Case

- ▶ Violation Notice Advantages
  - ▶ Can get enforceable CCA
  - ▶ Can get cease and desist language
  - ▶ Higher penalty
  - ▶ Order for cleanup
  - ▶ Significant penalty for defying order
- ▶ Violation Notice Disadvantages
  - ▶ Section 31 process takes longer
  - ▶ Formal court case can take a long time



# Criminal Case

- ▶ Criminal Case Advantages
  - ▶ People with badges and guns get RP's attention
  - ▶ Can be quick cases—or really long ones
  - ▶ Penalties include jail, fine, clean-up order
- ▶ Criminal Case Disadvantages
  - ▶ Law Enforcement buy-in
  - ▶ Busy State's Attorney caseloads
  - ▶ Higher standard of proof



# Ordinance Violation Case

- ▶ OV Case Advantages
  - ▶ Faster time to court
  - ▶ Can be quick cases—or really long ones
  - ▶ Wider range of nuisance violations
  - ▶ Great for small-scale problems
- ▶ OV Cases Disadvantages
  - ▶ Penalties can be low
  - ▶ Busy State's Attorney caseloads



# Enforcement Decision Group

- ▶ Members
  - ▶ County Inspector + County Management
  - ▶ State's Attorney
  - ▶ IEPA Representative-Working Supervisor or Regional Manager
- ▶ Discuss case and make enforcement decisions
  - ▶ In-person v. electronic meeting
  - ▶ Can decide to refer, delay, or drop cases



# Preparing an Administrative Citation for Filing

- ▶ When preparing an administrative citation for filing, the State's Attorney's Office should include the following information in the administrative citation:
  - ▶ Statement specifying the violations
  - ▶ Copy of the inspection report detailing **date, time, and weather**
  - ▶ Penalty required by Section 42(b)(4–5)
  - ▶ Instructions for contesting the administrative citation findings
    - ▶ Must include notification of 35-day deadline to file petition for review
  - ▶ Affidavit(s) of the inspector(s) attesting to their personal observations and actions



# Important Considerations

- ▶ The Pollution Control Board's website includes the filing materials for all administrative citations
  - ▶ A successful prior administrative citation can be a useful tool
- ▶ Assistant State's Attorneys
  - ▶ Take time to get acquainted with the ASA who will be filing
  - ▶ If the ASA prefers documents prepared in a particular manner, attempt to accommodate any reasonable requests
  - ▶ Kindly explain the benefits of pursuing an administrative citation
    - ▶ Simpler procedures than pursuing a violation notice or criminal action
    - ▶ Limited discovery and clear guidelines for civil prosecution
- ▶ Delegation Agreements
  - ▶ Remember that the yearly delegation agreement must be submitted to the Clerk of the Pollution Control Board prior to filing an administrative citation with the Board



# Limitations and Timing

- ▶ Limitations Period
  - ▶ The citation must be issued and **served** “not more than 60 days” after violation observed
  - ▶ A copy of the citation must be filed with the Board “no later than 10 days” after service date
    - ▶ Illinois EPA files a copy before service and updates with proof of service after service is completed
- ▶ Board Procedures
  - ▶ The Hearing Officer will set the schedule for any filings, discovery, and hearings, as appropriate
  - ▶ A petition for taxation of hearing costs must be filed within 30 days after the close of the hearing, unless the Hearing Office specifies otherwise



# Penalties

- ▶ Penalties for administrative citations are set forth by Section 42(b)(4–5)
  - ▶ Reference that Section each time you are preparing an administrative citation
- ▶ When a county issues an administrative citation, the county is entitled to 50% of the penalty
  - ▶ If the alleged violator does not pay, the State's Attorney's Office or other county attorney will be responsible for filing a collection action in the county's circuit court



# Choosing AC, VN, or Criminal Referral

- ▶ Nature of the Violation
  - ▶ Frequently, an administrative citation or criminal referral are not available paths to resolution
  - ▶ The size of the violation, mental state of the alleged violator, and sufficiency of penalty
- ▶ Timing
  - ▶ Will 60 days be enough time or be achievable?
- ▶ Discovery
  - ▶ Will civil discovery be required to determine the extent of the violation or prove portions of the case
- ▶ Penalties
  - ▶ Is a strict penalty of \$1,500 or \$3,000 sufficient to discourage the actor in the future?
  - ▶ Injunctive relief unavailable through administrative citation
- ▶ Prior Administrative Citations
  - ▶ Have prior administrative citations been ineffective to discourage behavior?
  - ▶ Is the County still owed money on one or more prior administrative citations?



# Criminal Referral

- ▶ Section 44 permits criminal charges
- ▶ Criminal Penalties
  - ▶ A violation of Section 44 is a Class A misdemeanor unless otherwise specified
- ▶ Open Dumping
  - ▶ Four major considerations:
    - ▶ Quantity exceeding 250 cubic **feet** of waste
    - ▶ Hazardous waste
    - ▶ Permit violation
    - ▶ Concealment



# Criminal Referral - Considerations

- ▶ Timing
  - ▶ Is an immediate remediation response required?
    - ▶ Section 43 or Violation Notice
- ▶ Consequences
  - ▶ Many violations of the Act can result in criminal liability
    - ▶ Does a criminal referral achieve best results?
    - ▶ Will the State's Attorney's Office accept referral?
- ▶ Mental State
  - ▶ Negligence is not a crime, and recklessness usually is not
  - ▶ *Mens rea* – Can criminal culpability be established?
- ▶ Burden of Proof
  - ▶ Preponderance of the Evidence – AC, VN, and Section 43
  - ▶ Beyond a Reasonable Doubt – Section 44



# Administrative Citations before the Illinois Pollution Control Board

Michelle Gibson  
IPCB Member

# The Illinois Pollution Control Board

- ▶ The Board is an independent agency created by the Environmental Protection Act.
- ▶ Board has two major responsibilities:
  - ▶ determining, defining, and implementing environmental control standards for Illinois,
  - ▶ adjudicating complaints that allege non-criminal violations
  - ▶ reviews appeals from
    - ▶ permitting and other determinations made IEPA
    - ▶ pollution control facility siting by units of local government

# The Illinois Pollution Control Board

- ▶ The Board is made up of five Members
- ▶ With 20 full time staff
- ▶ The Board's duties can be found in Title 2 administrative rules.
- ▶ The Board has two main offices, Chicago and Springfield

# The Board Members' diverse background

- ▶ Chair Barbara Flynn Currie (D) – Legislative background
- ▶ Jennifer Van Wie (R) – Environmental Law - AG's office
- ▶ Michael Mankowski (I) – Environmental Law - AG's office
- ▶ Angela Tin (I) – IEPA permitting and compliance
- ▶ Michelle Gibson (D) – Former County Solid Waste Manager/ Environmental Health Specialist

# *Ex parte* Communications

- ▶ Board members cannot be contacted privately to influence decisions
- ▶ Any off-the-record communication must be entered into the public record
- ▶ Ensures transparency, fairness, and impartial rulemaking

# Pollution Control Board Resources

- ▶ Citizen's Guide to the Illinois Pollution Control Board
- ▶ Clerk's office On-Line (COOL)
- ▶ Links to the Rules, the Act and IAPA

# Procedure

- ▶ Violation → Citation → Petition → Hearing → Decision

# Roles & Responsibilities

- ▶ IEPA – Issues Administrative Citations and oversees compliance
- ▶ Delegated Units – Local enforcement
- ▶ The Agency and The State’s Attorney file AC’s with the Board’s Clerk
- ▶ IPCB – Adjudicates petitions and enforces penalties

# Key Definitions

- ▶ Administrative Citation (AC): Notice of violation and penalty
- ▶ Recipient/Respondent: Person or entity issued a citation
- ▶ Delegated Unit: Local Unit of Government authorized by IEPA

# Administrative Citation: Agency and Delegated Unit Authority

- ▶ The Agency and delegated units of government have the authority to issue Administrative Citations under (415 ILCS 5/31.1)
- ▶ Administrative citation are filed with the Board under Title 35 Part 108.200
- ▶ Delegation agreements must be filed with the clerk by July 1 yearly

# Issuance of Administrative Citations under the Act (Section 108.200)

- ▶ A statement specifying the violation
- ▶ A copy of inspection report (date, time, weather conditions)
- ▶ Penalty imposed
- ▶ Affidavit from inspector witnessing violations
- ▶ Instructions to contest the violation (35-day limit)
- ▶ Potential hearing costs if the Recipient appeals and the Board finds a violation

# Proof of Service (Section 108.200)

- ▶ Personal service
- ▶ USPS Certified Mail requiring signature
- ▶ Commercial Certified Mail requiring signature

# Filing Requirements for Petition to Contest

(Section 108.204) (Section 101.300)

- ▶ AC Recipient may file a petition to contest
  - ▶ Can only be filed by named respondent and list The Agency as the Complainant
- ▶ Respondent has 35 days to file after **date of service**
  - ▶ Clerk uses the date received before 4:30pm in electronic filing
  - ▶ From a 3rd party the Clerk uses the date mailed not date received

# Petition Contents

(Sections 108.206 and 108.208)

- ▶ A formal petition must include any reasons why the AC Recipient believes the AC was improperly issued
  - ▶ AC Recipient did not cause or allow alleged violations
  - ▶ AC wasn't timely filed
  - ▶ AC's alleged violations were due to uncontrollable circumstances
- ▶ AC Recipient may withdraw the petition prior to the Board making a decision
  - ▶ In writing
  - ▶ Orally at hearing

# Authorization of Hearing

(Section 108.300) (Section 101.600)

- ▶ Hearing date set within 60 days after filing petition
- ▶ Hearing officer will give 21-day notice of hearing
- ▶ Open to public
- ▶ ADA compliant
- ▶ Videoconference (upon request if favorable conditions apply)

# Board Decisions

- ▶ Burden of proof (Section 108.400)
- ▶ Dismissal (Section 108.402)
- ▶ Default (108.404)
- ▶ Non-Contested Citations (108.406)

# Burden of Proof

(Section 108.400)

- ▶ The Agency or Delegated authority has the proof of burden
- ▶ Importance of AC components

# Dismissal

(Section 108.402)

- ▶ The Board may issue an order dismissing the AC and closing the docket
- ▶ If a motion is made by any party:
  - ▶ The Board
  - ▶ AC Recipient
  - ▶ The Agency or Delegated Unit
- ▶ This happens when the AC was not timely and properly served under the relevant statute

# Default

(Section 108.404)

- ▶ Happens if:
  - ▶ Failure of a party to appear at the hearing; or
  - ▶ Failure to proceed as ordered by the Board or hearing officer
- ▶ Upon default the Board will issue an order against the defaulting party

# Non-Contested Citations

(Section 108.406)

- ▶ The Board will consider the AC non-contested if
  - ▶ AC Recipient does not file a petition to contest
  - ▶ AC Recipient fails to timely file a petition to contest
  - ▶ AC Recipient withdraws its petition to contest

# Penalties and Cost

(Section 108.500)

- ▶ Recipient can receive relief from penalty if they prove uncontrollable circumstances were at fault
- ▶ Citations impose a penalty of \$500 per violation (Section 21(o))
  - ▶ Operating a landfill without a permit
  - ▶ open burning
- ▶ Citations related to open dumping impose \$1500 per violation ((Section 21(p)

# Claimed Cost To Agency or Delegated Authority (Section 108.502)

- ▶ The Agency or Delegated Unit must submit itemized costs associated with the hearing
  - ▶ Must be submitted within 30 days after the close of the hearing or as otherwise directed by the hearing officer,
  - ▶ The Agency or Delegated Unit must submit to the Clerk and serve on all parties
  - ▶ The costs must not include attorney's fees or witness fees for persons employed by The Agency or Delegated Unit.

# Board Costs

(Section 108.504)

At the beginning of every fiscal year the Board will place on file a schedule of hearing costs for AC cases. The schedule will include a per day breakdown of the Board's costs for holding a hearing. A copy will be available at the Board's offices and on the Board's Web site.

# Response to Claimed Costs and Reply

(Section 108.506)

- ▶ The AC Recipient may challenge costs from The Agency or Delegated Unit
- ▶ AC Recipient may challenge costs submitted by the Board
- ▶ Challenge response must be filed within 21 days after service of claimed cost
- ▶ The Agency or Delegated Unit has 14 days to respond to challenge
- ▶ The Board may hold evidentiary hearing on costs

# Board information

Submit documents to the Clerk's Office:

- **Electronic filing** available through COOL:

[www.ipcb.state.il.us](http://www.ipcb.state.il.us)

**Paper filing:**

- Illinois Pollution Control Board
- Clerk's Office – Attn: Don Brown
- 60 E. Van Buren, Suite 630
- Chicago, IL 60605

# Filing an Administrative Citation

- ▶ Visit the Clerk's Office On-Line (COOL) [pcb.illinois.gov/](http://pcb.illinois.gov/)
  - ▶ Choose Initial Filing
  - ▶ Pay \$75 fee
  - ▶ Provide contact information
  - ▶ Upload documents and photos

# Administrative Citations Program Stats

- ▶ 18 County Partners
- ▶ 2 other Units of Local Government
- ▶ Delegated partners serve over 8.2 mil residents of 12.7
- ▶ Over 2,200 AC's submitted since 1986
- ▶ Number of filings have fluctuated greatly over the years

# Delegated Units

## Units of Local Government

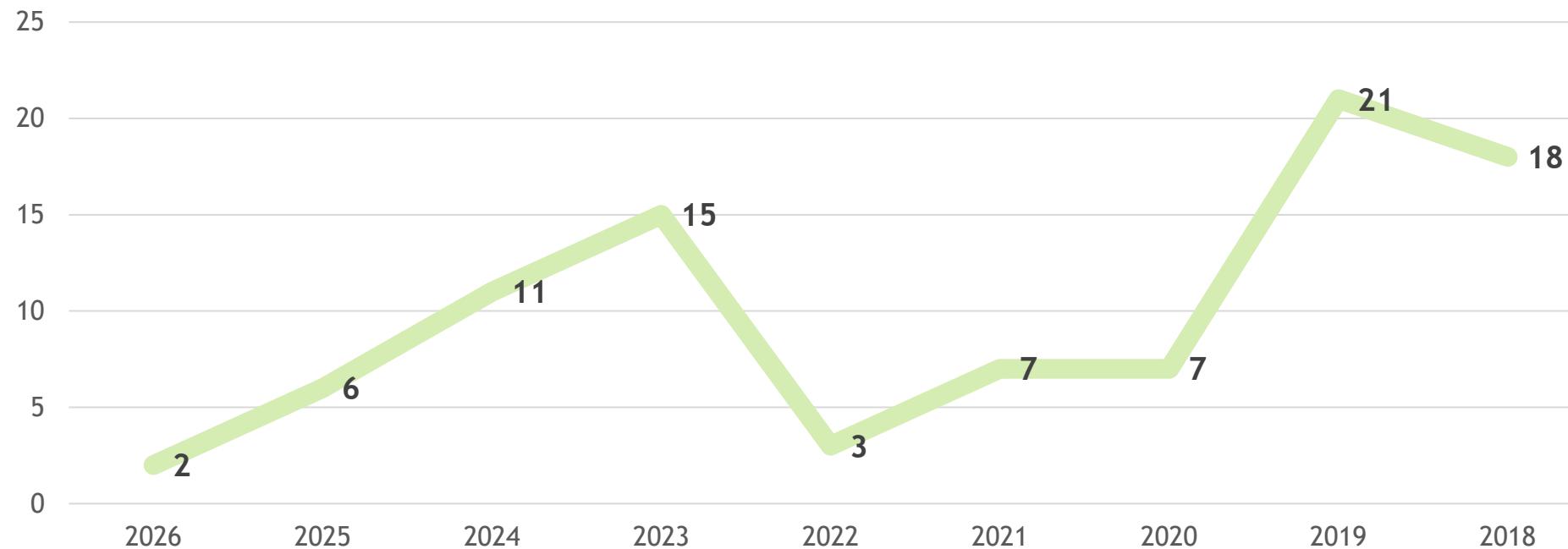
Ambrav Valley	Lake County	Ogle County
Christian County	LaSalle County	Perry County
City of Chicago	Macon County	Sangamon County
Cook County	Madison County	St. Clair County
DuPage County	McHenry County	Tazewell County
Jackson	Montgomery County	Vermillion

# Administrative Citation Filing Trends

Fiscal Year	Number of Citations
2026 (YTD)	2
2025	6
2024	11
2023	15
2022	3
2021	7
2020	7
2019	21
2018	18

# AC Trends

Number of Filings FY 2018-2026 YTD



# Best Practices & Tips

- ▶ Ensure accurate and timely service
- ▶ Keep detailed inspection reports and affidavits
- ▶ Communicate effectively with recipients

# In Summary

- ▶ Administrative citations streamline enforcement
- ▶ Follow statutory timeframes and procedures
- ▶ Collaboration between IEPA, PCB, and local partners is important

# Contact Information

- ▶ Dustin Burger, Illinois EPA Field Operations-Champaign
  - ▶ Phone: 217-278-5827 Email: [dustin.burger@illinois.gov](mailto:dustin.burger@illinois.gov)
- ▶ Adam Poe, Illinois EPA Division of Legal Counsel
  - ▶ Phone: 217-524-6722 Email: [adam.j.poe@illinois.gov](mailto:adam.j.poe@illinois.gov)
- ▶ Marie E. Tipsord, Illinois Pollution Control Board General Counsel
  - ▶ Phone: 312-814-4925 Email: [Marie.Tipsord@illinois.gov](mailto:Marie.Tipsord@illinois.gov)
- ▶ Don A. Brown, Illinois Pollution Control Board Clerk
  - ▶ Phone: 312-814-3461 Email: [Don.Brown@illinois.gov](mailto:Don.Brown@illinois.gov)

Thank you