

ILLINOIS POLLUTION CONTROL BOARD
June 7, 2007

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
v.) AC 07-54
) (IEPA No. 113-07-AC)
ADOLPH M. LO,) (Administrative Citation)
)
Respondent.)

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

On April 24, 2007, the Illinois Environmental Protection Agency (Agency) timely filed an administrative citation against Adolph M. Lo (respondent). *See* 415 ILCS 5/31.1(c) (2004); 35 Ill. Adm. Code 108.202(c). The administrative citation concerns a site commonly known as Champaign/LoFarms with Site Code No. 0198025007, and located at 2000 North Staley Road, Seymour, Champaign County. For the reasons below, the Board accepts the respondent's petition to contest the administrative citation.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2004)), an administrative citation is an expedited enforcement action brought before the Board seeking civil penalties that are fixed by statute. Administrative citations may be filed only by the Agency or, if the Agency has delegated the authority, by a unit of local government, and only for limited types of alleged violations at sanitary landfills or unpermitted open dumps. *See* 415 ILCS 5/3.305, 3.445, 21(o), (p), 31.1(c), 42(b)(4), (4-5) (2004); 35 Ill. Adm. Code 108.

In this case, the Agency alleges that respondent violated Sections 21(p)(1), (p)(3) and (p)(7) of the Act (415 ILCS 5/21(p)(1), (3), (7) (2004)) by causing or allowing the open dumping of waste in a manner resulting: (1) litter; (2) open burning; (3) deposition of general construction or demolition debris or clean construction or demolition debris. The Agency asks the Board to impose a \$4,500 civil penalty on respondent.

To contest an administrative citation, a respondent must file a petition with the Board no later than 35 days after being served with the administrative citation. If a respondent fails to do so, the Board must find that the respondent committed the violation alleged and impose the corresponding civil penalty. *See* 415 ILCS 31.1(d)(1) (2004); 35 Ill. Adm. Code 108.204(b), 108.406. Here, respondent was served with the administrative citation on April 26, 2007. The Board received respondent's petition on May 14, 2007. Thus, the petition was timely filed within the 35-day appeal period and 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. *See* 35 Ill. Adm. Code

108.300; 415 ILCS 5/31.1(d)(2) (2004). By contesting the administrative citation, respondent 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 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.

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

As indicated above, 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 respondent has violated Section 21(p)(1), (p)(3), or (p)(7) the Board will impose civil penalties on respondent. The civil penalty for violating any provision of subsection (p) of Section 21 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* 415 ILCS 5/42(b)(4-5) (2004); 35 Ill. Adm. Code 108.500(a). However, if the Board finds that respondent 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, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on June 7, 2007, by a vote of 4-0.



John T. Therriault, Assistant Clerk
Illinois Pollution Control Board