

ILLINOIS POLLUTION CONTROL BOARD  
April 17, 2014

ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Complainant,	)	
	)	
v.	)	AC 14-38
	)	(IEPA No. 51-14-AC)
LONE OAK ENTERPRISES, INC. and	)	(Administrative Citation)
LOMAX & SONS CONSTRUCTION,	)	
	)	
Respondent.	)	

ORDER OF THE BOARD (by C. K Zalewski):

On March 3, 2014, the Illinois Environmental Protection Agency (Agency) timely filed an administrative citation against Lone Oak Enterprises, Inc. and Lomax & Sons Construction (collectively respondents). *See* 415 ILCS 5/31.1(c) (2012); 35 Ill. Adm. Code 101.300(b), 108.202(c). The administrative citation concerns respondents' facility located at 17247 East Illinois 142 in Opdyke, Jefferson County (Site). The property is commonly known to the Agency as the "Opdyke/Lone Oak-Lomax" site and is designated with Site Code No. 0818110002. For the reasons below, the Board accepts respondents' petition to contest the administrative citation.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2012)), 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. *See* 415 ILCS 5/21(o), 21(p), 22.51, 22.51a, 31.1(c), 42(b)(4), 42(b)(4-5), 55(k) (2012); 35 Ill. Adm. Code 108.

In this case, the Agency alleges that on January 31, 2014, respondents violated Sections 21(p)(1), (p)(3), and (p)(7) of the Act (415 ILCS 5/21(p)(1), (p)(3), (p)(7) (2012)) by causing or allowing the open dumping of waste in a matter resulting in: a) litter; b) open burning; and c) deposition of general construction or demolition debris or clean construction or demolition debris. The petition also alleges that respondents violated Section 55(k)(1) of the Act (415 ILCS 5/55(k)(1) (2012)) by causing or allowing water to accumulate in used or waste tires at the Site. The Agency asks the Board to impose on respondents the statutory \$1,500 civil penalty for each alleged violation, for a total civil penalty of \$6,000.

As required, the Agency served the administrative citation on respondents within "60 days after the date of the observed violation." 415 ILCS 5/31.1(b) (2012); *see also* 35 Ill. Adm. Code 101.300(c), 108.202(b). Any petition to contest the administrative citation was due by April 7, 2014. On April 1, 2014, respondents timely filed a petition. *See* 415 ILCS 5/31.1(d)

(2012); 35 Ill. Adm. Code 101.300(b), 108.204(b). Respondents claim that the alleged violations were the result of uncontrollable circumstances. *See* 35 Ill. Adm. Code 108.206.

The Board accepts the petition and 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) (2012). By contesting the administrative citation, respondents may have to pay the hearing costs of the Board and the Agency. *See* 415 ILCS 5/42(b)(4-5) (2012); 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](http://www.ipcb.state.il.us). *See* 35 Ill. Adm. Code 108.504.

Respondents may withdraw their petition to contest the administrative citation at any time before the Board enters its final decision. If respondents choose to withdraw their petition, they must do so in writing, unless they do so orally at hearing. *See* 35 Ill. Adm. Code 108.208. If respondents withdraw their petition after the hearing starts, the Board will require respondents 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) (2012); 35 Ill. Adm. Code 108.400. If the Board finds that respondents violated Sections 21(p)(1), (p)(3), (p)(7), and 55(k)(1) of the Act, the Board will impose civil penalties on respondents. The civil penalty for violating any provision of Section 21(p) and 55(k) 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) (2012); 35 Ill. Adm. Code 108.500(a). However, if the Board finds that respondents have "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) (2012); *see also* 35 Ill. Adm. Code 108.500(b).

IT IS SO ORDERED.

I, John T. Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on April 17, 2014, by a vote of 4-0.



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John T. Therriault, Clerk  
Illinois Pollution Control Board