

ILLINOIS POLLUTION CONTROL BOARD
September 16, 2008

COUNTY OF JACKSON,)	
)	
Complainant,)	
)	
v.)	AC 09-8
)	(Site Code No. 07780350009)
DAN KIMMEL,)	(Administrative Citation)
)	
Respondent.)	

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

On July 30, 2008, the County of Jackson (County) timely filed an administrative citation against Dan Kimmel (Kimmel). *See* 415 ILCS 5/31.1(c) (2006); 35 Ill. Adm. Code 101.300(b), 108.202(c). The administrative citation concerns Kimmel's property located at latitude 37.82701 and longitude -89.24971 in Jackson County, designated with Site Code No. 07780350009, and known to the Illinois Environmental Protection Agency (Agency) as the "DeSoto/Dan Kimmel" site. For the reasons below, the Board accepts Kimmel's petition to contest the administrative citation.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2006)), 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) (2006); 35 Ill. Adm. Code 108.

In this case, the County alleges that Kimmel violated Sections 21(p)(1) and (p)(7) of the Act (415 ILCS 5/21(p)(1), (p)(7) (2006) (2006)) on July 8, 2008, by causing or allowing the open dumping of waste in a manner resulting in litter and the deposition of general or clean construction or demolition debris at the Jackson County site. The County asks the Board to impose a \$1,500 civil penalty for Kimmel's alleged violation of Section 21(p)(7), and a \$3,000 civil penalty for Kimmel's allegedly second violation of Section 21(p)(1), for a total civil penalty of \$4,500.

As required, the County served the administrative citation on Kimmel within "60 days after the date of the observed violation." 415 ILCS 5/31.1(b) (2006); *see also* 35 Ill. Adm. Code 101.300(c), 108.202(b). Any petition to contest the administrative citation was due within 35 days after the date of service, *i.e.*, by August 29, 2008. On August 27, 2008, Kimmel timely filed a petition *pro se*. *See* 415 ILCS 5/31.1(d) (2006); 35 Ill. Adm. Code 101.300(b), 108.204(b). Kimmel denies that his site is an "open dump" and asserts that he is "merely recycling," adding that he is cleaning up the property as quickly as he can. Petition at 1-2; *see also* 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) (2006). By contesting the administrative citation, Kimmel may have to pay the hearing costs of the Board and the County. *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.

Kimmel may withdraw his petition to contest the administrative citation at any time before the Board enters its final decision. If Kimmel 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 Kimmel withdraws his petition after the hearing starts, the Board will require Kimmel to pay the hearing costs of the Board and the County. *See id.* at 108.500(c).

The County 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 Kimmel violated Section 21(p) of the Act, the Board will impose civil penalties on Kimmel. Because the Act specifies the civil penalty for a violation in an administrative citation action, the Board cannot consider mitigating or aggravating factors when determining penalty amounts. *See, e.g., IEPA v. Stutsman*, AC 05-70, slip op. at 2 (Sept. 21, 2006). 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) (2006); 35 Ill. Adm. Code 108.500(a). However, if the Board finds that Kimmel "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 September 16, 2008, by a vote of 4-0.



John Therriault, Assistant Clerk
Illinois Pollution Control Board