

ILLINOIS POLLUTION CONTROL BOARD
November 5, 2008

COUNTY OF JACKSON,)
)
Complainant,)
)
v.) AC 09-9
) (Site Code No. 0778035022)
ALVIN VALDEZ and RUBEN J. VALDEZ,) (Administrative Citation)
)
Respondents.)

ORDER OF THE BOARD (by A.S. Moore):

On July 31, 2008, the County of Jackson (County) timely filed an administrative citation against Alvin Valdez and Ruben J. Valdez (respondents). *See* 415 ILCS 5/31.1(c) (2006); 35 Ill. Adm. Code 101.300(b), 108.202(c). The administrative citation concerns a property located at latitude 7.82693 and longitude 89.25043 near DeSoto, Jackson County, designated with Site Code No. 0778035022, and commonly known to the Illinois Environmental Protection Agency (Agency) as the “DeSoto/Alvin Valdez” site. Today, for the reasons below, the Board accepts for hearing the respondents’ amended petition.

The County alleges that respondents violated Sections 21(p)(1) and (p)(7) of the Environmental Protection Act (Act) (415 ILCS 5/21(p)(1), (p)(7) (2006)) on June 25, 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. According to the citation, Don Terry, a Field Inspector with the Jackson County Health Department, inspected the site on June 25, 2008. The County asks the Board to impose on respondents the statutory civil penalty of \$1,500 for each alleged violation, for a total civil penalty of \$3,000.

On August 27, 2008, respondents filed a petition requesting a hearing to dispute the administrative citation. On September 16, 2008, the Board issued an order accepting the 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 respondents to file an amended petition remedying this deficiency by October 16, 2008, or the Board would dismiss the petition and enter a default order against respondents. *See* 35 Ill. Adm. Code 108.404, 108.500(a).

On October 17, 2008, the Board received an amended petition filed *pro se* (Am. Pet.). Respondents’ petition denies the alleged violations, stating that they “don’t see scrap metal as open litter or as being a dump”. Am. Pet. at 1; *see* 35 Ill. Adm. Code 108.206. Respondents also assert that they are “are trying to fix this problem”. The Board notes that voluntary clean up actions performed by a respondent after a site inspection are generally neither a defense to the violations nor relevant to determining the civil penalty amount. *See IEPA v. Jack Wright*, AC 89-227, slip op. at 7 (Aug. 30, 1990) (“The Act, by its terms, does not envision a properly issued

administrative citation being dismissed or mitigated because a person is cooperative or voluntarily cleans-up the site”).

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* 415 ILCS 5/31.1(d)(2) (2006), 35 Ill. Adm. Code 108.300.

By contesting the administrative citation, respondents 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. Respondents may withdraw their amended petition at any time before the Board enters its final decision. If either respondent chooses to withdraw his amended petition, he must do so in writing, unless he does 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 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 respondents violated either Section 21(p)(1) or (p)(7) of the Act (415 ILCS 5/21(p)(1), (p)(7) (2006)), the Board will impose civil penalties. 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* 45 ILCS 5/42(b)(4-5) (2006); 35 Ill. Adm. Code 108.500(a). However, if the Board finds that a 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) (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 November 5, 2008, by a vote of 4-0.



John Therriault, Assistant Clerk
Illinois Pollution Control Board