

ILLINOIS POLLUTION CONTROL BOARD  
December 4, 2008

ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Complainant,	)	
	)	
v.	)	AC 09-19
	)	(IEPA No. 294-08-AC)
DONALD G. WILKEY,	)	(Administrative Citation)
	)	
Respondent.	)	

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

On October 24, 2008, the Illinois Environmental Protection Agency (Agency) timely filed an administrative citation against Donald G. Wilkey (respondent). See 415 ILCS 5/31.1(c) (2006); 35 Ill. Adm. Code 108.202(c). The administrative citation concerns respondent's facility located at 775 N 2200 E Road in Belle Rive, Jefferson County. The property is commonly known to the Agency as the "Belle Rive/Wilkey, Donald G." site and is designated with Site Code No. 0810055008. For the reasons below, the Board accepts respondent'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 Agency alleges that respondent violated Sections 21(p)(1), (p)(3), and (p)(7) of the Act (415 ILCS 5/21(p)(1), (p)(3), (p)(7) (2006)) on September 10, 2008, by causing or allowing the open dumping of waste in a manner resulting in litter, open burning, and the deposition of general or clean construction or demolition debris at the Belle Rive site. The Agency asks the Board to impose on respondent the statutory civil penalty of \$1,500 for each of the three alleged violations, for a total of \$4,500.

As required, the Agency served the administrative citation on respondent within "60 days after the date of the observed violation." 415 ILCS 5/31.1(b) (2006); see also 35 Ill. Adm. Code 108.202(b). Any petition to contest the administrative citation was due by November 21, 2008. On November 24, 2008, the Board received respondent's *pro se* petition (Pet.). The petition was timely filed because it was sent by U.S. Mail and postmarked on the filing deadline of November 21, 2008. See 415 ILCS 5/31.1(d) (2006); 35 Ill. Adm. Code 101.300(b), 108.204(b).

Respondent, who is the Mayor of Belle Rive, denies that he created a “dumpsite.” Pet. at 1. Respondent asserts, among other things, that materials were taken to the site and placed there “only temporarily because my house and property where my house sets was heavily damaged” by a storm that occurred on February 5, 2008. *Id.* Respondent claims he does not know who set some of the materials on fire. *Id.* at 2. According to the petition, respondent has “cleaned up all the materials.” *Id.* The Board notes that under Illinois Supreme Court precedent, one may “cause or allow” a violation of the Act without knowledge or intent. *See People v. Fiorini*, 143 Ill. 2d 318, 336, 574 N.E.2d 612, 621 (1991) (“knowledge or intent is not an element to be proved for a violation of the Act. This interpretation of the Act . . . is the established rule in Illinois.”). The Board further notes that in an administrative citation proceeding, 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”).

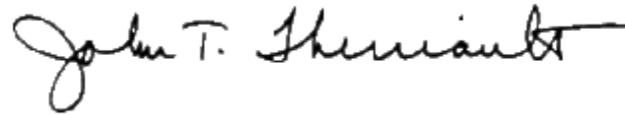
The Board accepts the petition and directs the hearing officer to proceed expeditiously to hearing. The hearing officer will give the parties at least 21 days written notice of the hearing. *See* 35 Ill. Adm. Code 108.300; 415 ILCS 5/31.1(d)(2) (2006). By contesting the administrative citation, respondent may have to pay the hearing costs of the Board and the Agency. *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](http://www.ipcb.state.il.us). *See* 35 Ill. Adm. Code 108.504.

Respondent may withdraw his petition to contest the administrative citation at any time before the Board enters its final decision. If respondent 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 respondent withdraws his 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).

The Agency 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 respondent violated Section 21(p) of the Act, 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) (2006); 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) (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 December 4, 2008, by a vote of 5-0.

A handwritten signature in black ink that reads "John T. Therriault". The signature is written in a cursive style with a long horizontal stroke at the end.

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John Therriault, Assistant Clerk  
Illinois Pollution Control Board