

ILLINOIS POLLUTION CONTROL BOARD
June 18, 2009

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	
)	
v.)	AC 09-46
)	(IEPA No. 94-09-AC)
C. JOHN BLICKHAN,)	AC 07-24
)	(IEPA No. 304-06-AC)
Respondent.)	AC 08-19
)	(IEPA No. 23-08-AC)
)	(Administrative Citations)
)	(Consolidated)

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

Today the Board accepts C. John Blickhan's petition for hearing in docket AC 09-46. The Board also grants C. John Blickhan's motion to consolidate AC 09-46 with previously consolidated administrative citations AC 07-24 and AC 08-19 for purposes of hearing, but not necessarily for decision. The Board first addresses the petition. The Board then addresses the motion to consolidate.

PETITION IN AC 09-46

On May 18, 2009, the Illinois Environmental Protection Agency (Agency) timely filed an administrative citation against C. John Blickhan (Blickhan). *See* 415 ILCS 5/31.1(c) (2006); 35 Ill. Adm. Code 101.300(b), 108.202(c). The administrative citation concerns a facility located at Lock and Dam Road in Quincy, Adams County. The facility is commonly known to the Agency as "Quincy/Blickhan Landfill" and is designated with Site Code No. 0010650002. For the reasons below, the Board accepts Blickhan'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 on March 17, 2009, Blickhan violated Section 21(p)(1) of the Act (415 ILCS 5/21(p)(1) (2006)) at the facility by causing or allowing the open dumping of waste in a manner resulting in litter. The Agency asks the Board to impose a \$1,500 civil penalty on Blickhan.

As required, the Agency served the administrative citation on Blickhan 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 by June 18, 2009. On June 1, 2009, Blickhan timely filed a petition (Pet.) with the Board. *See* 415 ILCS 5/31.1(d) (2006); 35 Ill. Adm. Code 101.300(b)(2), 108.204(b). The petition raises numerous grounds for contesting the administrative citation, including that Blickhan did not own or operate the facility at the pertinent time, that Blickhan did not cause or allow the alleged violations, and that if violations occurred, they resulted from uncontrollable circumstances. Pet. at 1-2; *See* 35 Ill. Adm. Code 108.206. 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) (2006). By contesting the administrative citation, Blickhan 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. *See* 35 Ill. Adm. Code 108.504.

Blickhan may withdraw his petition to contest the administrative citation at any time before the Board enters its final decision. If Blickhan 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 Blickhan withdraws his petition after the hearing starts, the Board will require Blickhan 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) (2006); 35 Ill. Adm. Code 108.400. If the Board finds that Blickhan violated Section 21(p)(1) of the Act, the Board will impose a civil penalty on Blickhan. 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 Blickhan 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).

MOTION TO CONSOLIDATE AC 09-46 WITH AC 07-24 AND AC 08-19

Along with his petition in AC 09-46, Blickhan filed a motion to consolidate (Mot.) AC 09-46 with previously consolidated AC 07-24 and AC 08-19. For the reasons below, the Board consolidates the three administrative citations for purposes of hearing, but not necessarily decision.

On October 20, 2006, the Agency timely filed an administrative citation against Blickhan in AC 07-24. The Agency alleged that Blickhan violated Sections 21(p)(1), (p)(3), and (p)(7) of the Act (415 ILCS 5/21(p)(1), (p)(3), and (p)(7) (2006)). The Agency further alleged that Blickhan violated these provisions by causing or allowing the open dumping of waste resulting in litter, open burning, and the deposition of general construction or demolition debris or clean

construction or demolition debris at a facility located at Lock and Dam Road, Quincy, Adams County. On November 9, 2006, Blickhan timely filed a petition to contest the administrative citation. In an order dated November 16, 2006, the Board accepted the petition for hearing.

On February 29, 2008, the Agency timely filed an administrative citation against Blickhan in AC 08-19. The Agency alleged that Blickhan violated Sections 21(p)(1), (p)(3), and (p)(7) of the Act (415 ILCS 5/21(p)(1), (p)(3), and (p)(7) (2006)). The Agency further alleged that Blickhan violated these provisions 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 a facility located at Lock and Dam Road, Quincy, Adams County. On March 24, 2008, Blickhan timely filed a petition to contest the administrative citation. In an order dated April 3, 2008, the Board accepted the petition for hearing.

On June 10, 2008, the Agency filed a motion to consolidate AC 07-24 and AC 08-19 for purposes of hearing. In an order dated July 10, 2008, the Board granted the Agency's unopposed motion to consolidate the appeals for hearing, but not necessarily for Board decision. *See* 35 Ill. Adm. Code 101.406.

In Blickhan's motion to consolidate AC 09-46 with AC 07-24 and AC 08-19, he argues that "[t]hese actions arise out of the same alleged unlawful conduct at the leased property commonly known as Blick's village in Quincy, Illinois, albeit occurring at different times." Mot. at 1. Blickhan further argues that "consolidation of these actions is appropriate, and in the interest of judicial economy" *Id.* Under the Board's procedural rules:

The Board, upon the motion of any party or upon its own motion, may consolidate two or more proceedings for the purpose of hearing or decision or both. The Board will consolidate the proceedings if consolidation is in the interest of convenient, expeditious, and complete determination of claims, and if consolidation would not cause material prejudice to any part. The Board will not consolidate proceedings where the burdens of proof vary. 35 Ill. Adm. Code 101.406.

Here, all of the administrative citations involve the same parties and concern the same facility located at Lock and Dam Road in Quincy, Adams County. Additionally, in each of these proceedings, the Agency has the burden to prove one or more alleged open dumping violations. Moreover, the Board has received no response to Blickhan's motion to consolidate from the Agency. Therefore, any objection to the motion has been waived. *See* 35 Ill. Adm. Code 101.500(d)

The Board grants Blickhan's motion to consolidate AC 09-46 with AC 07-24 and AC 08-19. The appeals are consolidated for hearing, but not necessarily for Board decision. *See* 35 Ill. Adm. Code 101.406. Future filings must reflect the caption of this order.

IT IS SO ORDERED.

I, John Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on June 18, 2009, 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 flourish at the end.

John Therriault, Assistant Clerk
Illinois Pollution Control Board