

ILLINOIS POLLUTION CONTROL BOARD  
July 23, 2009

ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Complainant,	)	
	)	
v.	)	AC 09-39
	)	(IEPA No. 18-09-AC)
DONALD SAPP,	)	(Administrative Citation)
	)	
Respondent.	)	

ORDER OF THE BOARD (by T.E. Johnson):

On March 12, 2009, the Illinois Environmental Protection Agency (Agency) timely filed an administrative citation against Donald Sapp (Sapp). *See* 415 ILCS 5/31.1(c) (2008); 35 Ill. Adm. Code 101.300(b), 108.202(c). The administrative citation concerns Sapp's property located at 29321 Dutch Creek Road in Rockport, Pike County. The property is commonly known to the Agency as the "Rockport/Sapp" site and is designated with Site Code No. 1498005003. For the reasons below, the Board accepts Sapp's amended petition for hearing.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2008)), 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) (2008); 35 Ill. Adm. Code 108.

In this case, the Agency alleges that on January 22, 2009, Sapp violated Section 21(p)(1) of the Act (415 ILCS 5/21(p)(1) (2008)) by causing or allowing the open dumping of waste in a manner resulting in litter at his Pike County site. The Agency asks the Board to impose the statutory \$1,500 civil penalty on Sapp.

As required, the Agency served the administrative citation on Sapp within "60 days after the date of the observed violation." 415 ILCS 5/31.1(b) (2008); *see also* 35 Ill. Adm. Code 101.300(c), 108.202(b). Any petition to contest the administrative citation was due by April 15, 2009. On April 17, 2009, the Board received Sapp's petition, which was considered timely filed because it was postmarked on or before the filing deadline. *See* 35 Ill. Adm. Code 101.300(b)(2) ("mailbox rule"). On May 7, 2009, the Board issued an order accepting the petition as timely filed, but finding the petition deficient because Sapp failed to provide grounds for contesting the administrative citation. *See* 35 Ill. Adm. Code 108.204(b), 108.206. The Board directed Sapp to file an amended petition remedying this deficiency by June 9, 2009.

On June 11, 2009, the Board received Sapp's amended petition (Am. Pet.), which is considered timely filed because it was postmarked on the June 9, 2009 filing deadline. *See* 35 Ill. Adm. Code 101.300(b)(2). The amended petition alleges, among other things, that "[a]ll listed observations in [a prior] inspection have been abated," adding that "delivery tickets taken to a scrap dealer are available for review." Am. Pet. at 1. The Board notes, however, that in an administrative citation proceeding, voluntary clean up acts performed by a respondent after a site inspection are generally neither a defense to the alleged violation nor relevant in determining the civil penalty amount. *See, e.g., IEPA v. Jack Wright*, AC 89-227, slip op. at 7 (Aug. 30, 1990). Sapp also maintains that he did not know of the Act. Am. Pet. at 1. However, one may "cause or allow" a violation of the Act without knowledge or intent. *See, e.g., People v. Fiorini*, 143 Ill. 2d 318, 336, 574 N.E.2d 612, 621 (1991).

The amended petition further alleges that the Agency failed to inform Sapp of his opportunity to meet and enter into a "Compliance Commitment Agreement" with the Agency. Am. Pet. at 1. That opportunity, however, is not an aspect of the administrative citation process, but instead is an element of the pre-enforcement process under Section 31 of the Act (415 ILCS 5/31 (2008)). The Section 31 pre-enforcement process is a precondition to the Agency referring unresolved alleged violations to the Attorney General's Office or the State's Attorney for the filing of a formal complaint. *See* 415 ILCS 5/31(a), (b) (2008). Here, what has been filed against Sapp is not a formal complaint under Section 31, but rather an administrative citation under Section 31.1. *See, e.g., County of Jackson v. Egon Kamarasy*, AC 04-63, AC 04-64 (consol.), slip op. at 19-21 (June 16, 2005) (explaining administrative citation and formal complaint processes); *Jack Wright*, AC 89-227, slip op. at 5-6 (The Act allows the Agency to "use either the administrative citation or formal enforcement proceedings" to enforce the Section 21(p) prohibitions. (emphasis in original)); *see also* 415 ILCS 5/31.1(a) (2008).

The amended petition, however, makes additional assertions. According to Sapp, his site is "divided into two segments: agriculture and industrial operations." Am. Pet. at 1. Sapp alleges that certain vehicles are necessary for the "farming and excavation" operations at the site and that indoor storage of his "multiplicity of equipment" should not be required. *Id.* at 2. Sapp also asserts that "[l]isted scrap items were repair parts or damaged parts to be taken to a scrap dealer." *Id.* at 1. The Board accepts the amended 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) (2008). By contesting the administrative citation, Sapp may have to pay the hearing costs of the Board and the Agency. *See* 415 ILCS 5/42(b)(4-5) (2008); 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.

Sapp may withdraw his amended petition to contest the administrative citation at any time before the Board enters its final decision. If Sapp 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 Sapp withdraws his amended petition after the hearing starts, the Board will require Sapp 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) (2008); 35 Ill. Adm. Code 108.400. If the Board finds that Sapp violated Section 21(p)(1) of the Act, the Board will impose a civil penalty on Sapp. 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) (2008); 35 Ill. Adm. Code 108.500(a). However, if the Board finds that Sapp 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) (2008); *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 July 23, 2009, by a vote of 5-0.



---

John Therriault, Assistant Clerk  
Illinois Pollution Control Board