

ILLINOIS POLLUTION CONTROL BOARD  
November 19, 2009

ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
 )  
Complainant, )  
 )  
v. ) AC 10-3  
 ) (IEPA No. 164-09-AC)  
LES CURTIS, ) (Administrative Citation)  
 )  
Respondent. )

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

On August 18, 2009, the Illinois Environmental Protection Agency (Agency) timely filed an administrative citation against Les Curtis (Curtis). *See* 415 ILCS 5/31.1(c) (2008)<sup>1</sup>; 35 Ill. Adm. Code 101.300(b), 108.202(c). The administrative citation concerns Curtis' residential property located at 28800 Bodeyville Road in Gale, Alexander County. The property is commonly known to the Agency as the "Gale/Curtis, Les" site and is designated with Site Code No. 0035890012. For the reasons below, the Board accepts Curtis' amended petition for hearing.

The Agency alleges that Curtis violated Sections 21(p)(1) and (p)(7) of the Act (415 ILCS 5/21(p)(1), (p)(7) (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 Gale County site. According to the citation, Robert Mileur, a Field Inspector with the Agency, inspected the site on July 24, 2009. The Agency asks the Board to impose on respondent the statutory civil penalty of \$1,500 for each alleged violation, for a total civil penalty of \$3,000.

On September 22, 2009, Curtis filed a petition requesting a hearing to dispute the administrative citation. On October 1, 2009, the Board issued an order accepting the petition as timely filed, but finding the petition deficient because the petition did not provide: 1) grounds for contesting the administrative citation, and 2) an indication that Curtis served a copy of the petition upon the Agency. *See* 35 Ill. Adm. Code 108.204(b), 108.206. The Board directed respondent to file an amended petition remedying this deficiency by November 2, 2009, or the Board would dismiss the petition and enter a default order against respondent. *See* 35 Ill. Adm. Code 108.404, 108.500(a).

On November 4, 2009, the Board received an amended petition filed *pro se* with an attached receipt showing the citation was mailed to the Agency. The petition is considered timely filed because it was postmarked on or before the filing deadline. *See* 35 Ill. Adm. Code

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<sup>1</sup> All citations to the Act are to the 2008 compiled statutes because the provisions at issue have not been substantively amended in the 2008 compiled statutes.

101.300(b)(2) (“mailbox rule”). Curtis’ petition denies the alleged violations. Petition at 1. *See* 35 Ill. Adm. Code 108.206. Curtis also asserts “I have spent the past 4 years attempting to clean up said property”. 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* 35 Ill. Adm. Code 108.300; 415 ILCS 5/31.1(d)(2) (2008).

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) (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. Respondent may withdraw his amended petition at any time before the Board enters its final decision. If 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 respondent withdraw 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) (2008); 35 Ill. Adm. Code 108.400. If the Board finds that respondent violated Sections 21(p)(1) and (p)(7) of the Act (415 ILCS 5/21(p)(1), (p)(7) (2008)), 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 Section 21(p) 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) (2008); 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) (2008); *see also* 35 Ill. Adm. Code 108.500(b).

IT IS SO ORDERED.

C.K. Zalewski abstained.

I, John Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on November 19, 2009, by a vote of 4-0.

A handwritten signature in black ink that reads "John T. Therriault". The signature is written in a cursive style with a long horizontal flourish extending to the right.

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John Therriault, Assistant Clerk  
Illinois Pollution Control Board