

ILLINOIS POLLUTION CONTROL BOARD
November 19, 2009

COUNTY OF OGLE,)
)
 Complainant,)
)
 v.) AC 10-4
) (IEPA -LPC No. 1418015002)
 KATHY KNUTSON, STEVE KNUTSON,) (Administrative Citation)
 AND DAN BOCKER,)
)
 Respondent.)

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

On September 1, 2009, County of Ogle (County) timely filed an administrative citation against Kathy Knutson, Steve Knutson, (the Knutsons) and Dan Bocker (Bocker). The administrative citation was timely filed because it was postmarked on or before the filing deadline. *See* 415 ILCS 5/31.1(c) (2008)¹; 35 Ill. Adm. Code 101.300(b), 108.202(c). The administrative citation concerns Knutsons' and Bocker's facility located 9413 W. Henry Road, Ogle County. The property is commonly known to the Illinois Environmental Protection Agency (Agency) as the "Knutson/Bocker" site and is designated with Site Code No. 1418015002. For the reasons below, the Board does the following: (1) denies the Knutsons' motion to dismiss, (2) accepts the Knutsons' petition to contest the administrative citation, and (3) finds that Bocker violated the Act (415 ILCS 5 (2008) as alleged in the administrative.

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 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 July 6 and 7, 2009, Knutsons and Bocker violated Sections 21(p)(1), (p)(3) and (p)(7)(I) of the Act (415 ILCS 5/21(p)(1), (p)(3) and (p)(7)(i) (2008)) by causing or allowing littering, causing or allowing open burning, and causing or allowing the deposition of general construction or demolition debris at the Ogle County site. The Agency asks the Board to impose the statutory \$4,500 civil penalty on Knutsons and Bocker.

As required, the Agency served the administrative citation on Knutsons and Bocker within "60 days after the date of the observed violation." 415 ILCS 5/31.1(b) (2008); *see also* 35

¹ All citations to the Act will be to the 2008 compiled statutes, unless the provision at issue has been substantively amended in the 2008 compiled statutes.

Ill. Adm. Code 101.300(c), 108.202(b). Exactly 60 days after the July 7, 2009 violation was Saturday, September 5, 2009. Bocker was served on September 2, 2009; therefore, the service to Bocker was timely. The Knutsons were served on September 8, 2009. The Knutsons allege in their motion to dismiss that service was not timely, because they were not served by September 5. However, the next business day after Saturday September 5 was Monday, September 7, 2009, which was the Labor Day holiday. Pursuant to the Board's rules, time is computed to "run until the close of business on the last day, or the next business day if the last day is a Saturday, Sunday or national or State legal holiday." 35 Ill. Adm. Code 101.300(a). Therefore, the Board finds that service was timely for the July 7, 2009 inspection and the Board denies the Knutsons' motion to dismiss for untimely service as to the July 7, 2009 inspection. However the allegations that relate to the July 6, 2009 inspection are dismissed as the service was not timely on the Knutsons for that inspection.

To contest an administrative citation, a respondent must file a petition with the Board no later than 35 days after being served with the administrative citation. Any petition to contest the administrative citation was due by October 13, 2009. On October 15, 2009, Knutsons timely filed a petition. The petition was timely filed because it was postmarked on or before the filing deadline. *See* 415 ILCS 5/31.1(d) (2008); 35 Ill. Adm. Code 101.300(b), 108.204(b). Knutsons deny the violations alleged in the citation. *See* 35 Ill. Adm. Code 108.206.

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) (2008). By contesting the administrative citation, the Knutsons 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. *See* 35 Ill. Adm. Code 108.504.

The Knutsons may withdraw their petition to contest the administrative citation at any time before the Board enters its final decision. If the Knutsons chooses to withdraw their petition, they must do so in writing, unless they do so orally at hearing. *See* 35 Ill. Adm. Code 108.208. If the Knutsons withdraw their petition after the hearing starts, the Board will require Knutsons to pay the hearing costs of the Board and the Agency. *See id.* at 108.500(c).

The County 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 the Knutsons violated Sections 21(p)(1), (p)(3) and (p)(7)(I), the Board will impose civil penalties on the Knutsons. 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 the Knutsons "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).

As was noted above, a respondent must file a petition with the Board no later than 35 days after being served with the administrative citation to contest that citation. If the respondent fails to do so, the Board must find that the respondent committed the violations alleged and impose the corresponding civil penalty. *See* 415 ILCS 31.1(d)(1) (2008); 35 Ill. Adm. Code 101.300(b), 108.204(b), 108.406. Here, any petition for review by Bocker was due by October 7, 2009. Bocker failed to timely file a petition. Accordingly, the Board finds that Bocker violated (p)(1), (p)(3) and (p)(7)(i) of the Act. However, the Board will withhold a final order concerning Bocker until the Board reaches a final determination regarding the Knutsons. *See* IEPA v. Theodore and Elizabeth Hollembeak and Hollembeak Concrete Inc. AC 09-2 (Dec. 4, 2008); IEPA v. Ray Logsdon Estate, Logsdon Sand and Gravel, and M.K. O'Hara Construction, Inc., AC 05-54, slip op. at 3 (Apr. 21, 2005).

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.



John Therriault, Assistant Clerk
Illinois Pollution Control Board