

ILLINOIS POLLUTION CONTROL BOARD
January 21, 2010

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
v.) AC 10-10
) (IEPA No. 294-09-AC)
JESS SPRADLIN d/b/a SPRADLIN MOTOR) (Administrative Citation)
HOMES AND DREWNARD WOODS AND)
KRIS WARREN d/b/a W&W AUTO)
SERVICE,)
)
Respondents.)

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

On December 4, 2009, the Illinois Environmental Protection Agency (Agency) timely filed an administrative citation against Jess Spradlin, d/b/a Spradlin Motor Homes (Spradlin) and Drenward Woods and Kris Warren, d/b/a W&W Auto Service. *See* 415 ILCS 5/31.1(c) (2008); 35 Ill. Adm. Code 101.300(b), 108.202(c). The administrative citation concerns a facility located at 1709 Dirksen Parkway, Springfield, Sangamon County. The property is commonly known to the Agency as the “Springfield/W&W Auto Service” site and is designated with Site Code No. 1671205263. On January 6, 2010, Spradlin filed a petition with the Board to contest the administrative citation. 35 Ill. Adm. Code 101.300(b)(2), 108.204(b). No petition has been received on behalf of the remaining respondents. For the reasons below, the Board accepts Spradlin’s petition as timely filed, but directs Spradlin to file an amended petition to cure certain deficiencies.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2008)),¹ 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 October 5, 2009, Spradlin violated Sections 21(p)(1) and 55(k)(1) of the Act (415 ILCS 5/21(p)(1), 5/55 (k)(1) (2008)) by causing or allowing the open dumping of waste in a manner resulting in litter and causing or allowing water to accumulate in waste tires. The Agency asks the Board to impose the statutory civil penalty of \$1,500 per violation for a total civil penalty of \$4,500.

¹ 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.

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). The administrative citation alleges that the Section 21(p)(1) violation is respondent's second or subsequent violation of that provision. Because this is a second or subsequent adjudicated violation of Section 21(p)(1) (*see IEPA v. Jess Spradlin d/b/a Spradlin Mobile Home Sales and Drewnard Woods and Kris Warren d/b/a W&W Auto Service*, AC 10-1 (September 3, 2009)), respondent is subject to a civil penalty of \$3,000 for the second or subsequent violation of Section 21(p)(1) and \$1,500 for the alleged violation Section 5/55 (k)(1), for a total civil penalty of \$4,500.

As required, the Agency served the administrative citation on Spradlin 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 September 19, 2009. On January 6, 2010, the Board received Spradlin's petition to contest the administrative citation. The petition is considered timely filed because it was postmarked on or before the filing deadline. *See* 35 Ill. Adm. Code 101.300(b)(2) ("mailbox rule").

The Board finds, however, that there are two deficiencies with Spradlin's petition that must be remedied before the Board can accept this case for hearing. First, contrary to the Board's procedural rules, Spradlin fails to allege any grounds for contesting the administrative citation. *See* 35 Ill. Adm. Code 108.206. Second, there is no indication that Spradlin served a copy of the petition upon the Agency. Under the Board's procedural rules, Spradlin was required to serve a copy of the petition upon the Agency and file proof of that service with the Board. *See* 35 Ill. Adm. Code 101.304. The Board directs Spradlin to file an amended petition, accompanied by a certificate of service. The amended petition must state any grounds for contesting the administrative citation. The certificate of service must document that Cutis served a copy of the amended petition upon the Agency. If Spradlin fails to file these documents with the Board by February 22, 2010, which is the first business day following the 30th day after the date of this order, the Board will dismiss the petition and enter a default order against Spradlin, imposing the \$4,500 penalty.

If Spradlin proceeds to contest the administrative citation but does not prevail on the merits of the case, Spradlin will have to pay not only the \$4,500 penalty but also any 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 website at www.ipcb.state.il.us. *See* 35 Ill. Adm. Code 108.504.

IT IS SO ORDERED.

I, John Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on January 21, by a vote of 4-0.



John Therriault, Assistant Clerk