

ILLINOIS POLLUTION CONTROL BOARD
February 18, 2010

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	
)	
v.)	AC 10-12
)	(IEPA No. 336-09-AC)
LANDERS' CHILDREN FAMILY, LLC,)	(Administrative Citation)
)	
Respondent.)	

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

On January 12, 2010, the Illinois Environmental Protections Agency (IEPA) timely filed an administrative citation against Landers' Children Family, LLC. (respondent). *See* 415 ILCS 5/31.1(c) (2008); 35 Ill. Adm. Code 101.300(b), 108.202(c). The administrative citation concerns respondent's facility located on the west side of Bab Road northeast of Auburn, Sangamon County. The property is commonly known to the IEPA as the "Auburn / Landers' Children Family, LLC" site and is designated with Site Code No. 1678005010. For the reasons below, the Board accepts respondent's petition to contest the administrative citation.

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 IEPA or, if the IEPA 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 IEPA alleges that on November 25, 2009, respondent violated Section 21(p) (1), (7) and Section 55(k)(1) of the Act (415 ILCS 5/21(p)(1), (7) and 55(k)(1) (2008)) by open dumping of waste in a manner resulting in litter, deposition of construction or demolition debris, and to accumulate in waste tires, at respondent's Sangamon County site. IEPA asks the Board to impose the statutory \$7,500 civil penalty on respondent.

As required, IEPA served the administrative citation on respondent 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 February 25, 2010. On February 11, 2010, respondent timely filed a petition. *See* 415 ILCS 5/31.1(d) (2008); 35 Ill. Adm. Code 101.300(b), 108.204(b). Respondent alleges that the facility is not an open dump, the conditions are the result of uncontrollable circumstances, and that respondent did not cause or allow open dumping. *See* 35 Ill. Adm. Code 108.206.

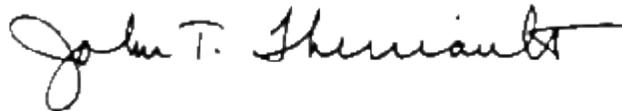
The Board accepts the petition and directs the hearing officer to proceed expeditiously to hearing. The hearing officer will give the parties at least 21 days written notice of the hearing. *See* 35 Ill. Adm. Code 108.300; 415 ILCS 5/31.1(d)(2) (2008). By contesting the administrative citation, respondent may have to pay the hearing costs of the Board and IEPA. *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.

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

IEPA 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 Section 21(p) (1), (7) and Section 55(k)(1) of the Act (415 ILCS 5/21(p)(1), (7) and 55(k)(1) (2008)), the Board will impose civil penalties on respondent. 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 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.

I, John Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on February 18, 2010, by a vote of 4-0.



John Therriault, Assistant Clerk
Illinois Pollution Control Board