

ILLINOIS POLLUTION CONTROL BOARD
March 4, 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):

This is an administrative citation enforcement action brought by the Illinois Environmental Protection Agency (Agency) against Jess Spradlin, d/b/a Spradlin Motor Homes (Spradlin) and Drewnard Woods and Kris Warren, d/b/a W&W Auto Service (collectively, Respondents). The case 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. In an order dated January 21, 2010, the Board accepted for hearing a petition for review filed by Jess Spradlin, but directed Jess Spradlin to file an amended petition in a timely manner. Today, for the reasons below, the Board accepts for hearing the respondent’s amended petition.

In this order, the Board acknowledges that it has accepted an amended petition for review filed by Jess Spradlin and directs the hearing officer to proceed expeditiously to hearing on that petition. In addition, the Board finds that Drewnard Woods and Kris Warren, d/b/a W&W Auto Service have defaulted but withholds issuing its final order until the Board makes its final determination regarding Jess Spradlin. Before doing so, the Board provides the legal and procedural background for this case.

LEGAL BACKGROUND

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

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.

violations at sanitary landfills or unpermitted open dumps. *See* 415 ILCS 5/3.305, 3.445, 21(o), 21(p), 31.1(c), 42(b)(4), (4-5) (2008); 35 Ill. Adm. Code 108.

The Agency or delegated local authority must serve the administrative citation on the respondent within “60 days after the date of the observed violation.” 415 ILCS 5/31.1(b) (2008); *see also* 35 Ill. Adm. Code 108.202(b). The Agency or delegated local authority must also file a copy of the administrative citation with the Board no later than ten days after serving the respondent. *See* 415 ILCS 5/31.1(c) (2008).

To contest the administrative citation, the respondent must file a petition with the Board no later than 35 days after being served with the administrative 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 108.204(b), 108.406.

If the respondent timely contests the administrative citation, but the complainant proves the alleged violations at hearing, the respondent will be held liable not only for the civil penalty but also for the hearing costs of the Board and the complainant. *See* 415 ILCS 5/42(b) (4-5) (2008); 35 Ill. Adm. Code 108.500. However, if the Board finds that the 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).

PROCEDURAL BACKGROUND

On December 4, 2009, the Agency timely filed an administrative citation against the respondents. *See* 415 ILCS 5/31.1(c) (2008); 35 Ill. Adm. Code 108.202(c). The Agency alleges that respondents violated Sections 21(p) (1) and 55(k) (1) of the Act (415 ILCS 5/21(p) (1), 5/55(k) (1) (2008)). The Agency alleges that respondents violated these provisions 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 at 1709 Dirksen Parkway, Springfield, Sangamon County. The Agency states that the inspection on which the citation is based occurred on October 5, 2009.

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 Drenward 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 55(k)(1), for a total civil penalty of \$4,500.

On January 6, 2010, Jess Spradlin filed a petition for review (Pet.) requesting a hearing in this matter. Pet. at 1; *see* 35 Ill. Adm. Code 108.206. In an order dated January 21, 2010, the

Board stated that, contrary to the Board's procedural rules, there is no indication Jess Spradlin served a copy of the petition upon the Agency and fails to allege any grounds for contesting the administrative citation or proof. *See* 35 Ill. Adm. Code 108.206. The Board's order stated that, if respondent failed to file an amended petition by February 22, 2010, it would enter a default order. On February 24, 2010, Jess Spradlin filed an amended petition for review (Am. Pet.) denying the allegations and stating that there were uncontrollable circumstances pertaining to the alleged violations and that the Agency was served the amended petition for review. Am. Pet. at 1; *see* 35 Ill. Adm. Code 108.206. The amended petition was timely filed because it was postmarked on or before the filing deadline. *See* 35 Ill. Adm. Code 101.300(b). The Board has not received a petition from Drewnard Woods and Kris Warren, d/b/a W&W Auto Service.

DISCUSSION

As required, the Agency served the administrative citation on the respondents within "60 days after the date of the observed violation." 415 ILCS 5/31.1(b) (2006); *see also* 35 Ill. Adm. Code 108.202(b). 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. On December 9, 2009, the Agency filed proof that it had timely served the administrative citation on respondents on December 2, 2010; any petition for review would have been due on or before January 6, 2010. As noted above, the Board has accepted as timely a petition for review filed by Jess Spradlin. If a respondent fails to file a timely petition for review, the Board must find that the respondent committed the violations alleged and impose the corresponding statutory civil penalty. 415 ILCS 31.1(d) (1) (2008); 35 Ill. Adm. Code 108.204(b), 108.406. Here, Drewnard Woods and Kris Warren, d/b/a W&W Auto Service failed to file a timely petition. Accordingly, the Board finds that Drewnard Woods and Kris Warren, d/b/a W&W Auto Service violated Sections 21(p)(1) and 55(k)(1) of the Act (415 ILCS 5/21(p)(1), 5/55 (k)(1) (2008)) of the Act. However, the Board will withhold a final order concerning Drewnard Woods and Kris Warren, d/b/a W&W Auto Service until the Board reaches a final determination regarding Jess Spradlin. *See Illinois Environmental Protection Agency 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).

With regard to Jess Spradlin, 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. 35 Ill. Adm. Code 108.300; *see also* 415 ILCS 5/31.1(d) (2) (2008). By contesting the administrative citation, Jess Spradlin may have to pay the hearing costs of the Board and the Agency. *See* 415 ILCS 5/42(b) (4-5) (2006); 35 Ill. Adm. Code 108.500. A schedule of the Board's hearing costs is available at the Board's offices and on the Board's Web site at www.ipcb.state.il.us. 35 Ill. Adm. Code 108.504.

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

Jess Spradlin 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 Jess Spradlin violated Sections 21(p) (1) and 55(k) (1) of the Act (415 ILCS 5/21(p) (1), 5/55 (k) (1) (2008)), the Board will impose civil penalties on Jess Spradlin. The civil penalty for violating Section 21(p) is \$1,500 for a first offense and \$3,000 for a second or subsequent offense. 415 ILCS 5/42(b (4-5) (2008); 35 Ill. Adm. Code 108.500. 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. However, if the Board finds that Jess Spradlin "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).

CONCLUSION

In today's order, the Board acknowledges that it has accepted as timely an amended petition for review filed by Jess Spradlin. Also in today's order, the Board finds that Drewnard Woods and Kris Warren, d/b/a W&W Auto Service have defaulted by failing to file a petition to contest the administrative citation. Accordingly, the Board finds that Drewnard Woods and Kris Warren, d/b/a W&W Auto Service violated the Act as alleged. With regard to Jess Spradlin, the Board directs the hearing officer to proceed expeditiously to hearing. The Board withholds issuing its final order regarding Drewnard Woods and Kris Warren, d/b/a W&W Auto Service until the Board makes its final decision regarding Jess Spradlin.

IT IS SO ORDERED

I, John Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on March 4, 2010, by a vote of 5-0.



John Therriault, Assistant Clerk
Illinois Pollution Control Board