

ILLINOIS POLLUTION CONTROL BOARD
June 3, 2010

ILLINOIS ENVIRONMENTAL)	
PROTECTION,)	
)	
Complainant,)	
)	
v.)	AC 10-21
)	(IEPA No.124-10AC
DAVID BETTIS,)	(Administrative Citation)
)	
Respondent.)	
)	

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

On April 22, 2010, the Illinois Environmental Protection Agency (Agency) timely filed an administrative citation against David Bettis (Bettis). *See* 415 ILCS 5/31.1(c) (2008) 35 Ill. Adm. Code 101.300(b), 108.202(c). The administrative citation concerns Bettis’s property, which he uses weekly as a livestock auction, and which is located on Rte. 108–1 Mile East, Carrollton, Greene County. The property is commonly known as the “Carrollton Livestock Auction” and is designated by the Agency as Site Code LPC # 0618025001. For the reason below, the Board accepts Bettis’s petition as timely filed, but directs Bettis to serve the petition on the Agency and file a certificate of service with the Board.

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 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 February 19, 2010, at Bettis’s Greene County site, Bettis violated Sections 9 21(p)(1) and 21(p)(3) of the Act (415 ILCS 521(p)(1), 21(p)(3) (2008)) by causing or allowing open dumping and storage or abandonment of waste without a permit, resulting in littering, open burning and air pollution. The Agency asks the Board to impose the statutory civil penalty of \$1,500 per violation for a total civil penalty of \$3,000.

The civil penalty for first-time violations of any provision of subsection (p) of Section 21 is \$1,500, and the penalty rises to \$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 Bettis has violated Subsections (p)(1) and (p)(3) of Section 21. If the Board finds that Bettis violated these provisions, he will be subject to a civil penalty of \$3,000. However, if the Board finds that Bettis “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).

The Agency served the administrative citation on Bettis on April 15, 2010, within “60 days after the date of the observed violation” on February 19, 2010, as required by 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 May 20, 2010. On May 20, 2010, Bettis timely filed a petition. *See* 415 ILCS 5/31.1(d) (2008); 35 Ill. Adm. Code 101.300(b), 108.204(b). Bettis alleges that he has not caused or allowed the violations and that those who burn and dump on his property are unknown to him because they do so in his absence, which lasts five to six days per week. He further alleges that he has posted “no dumping” and “no trespassing” signs, and that because he is unable to afford security equipment to identify the violators, the violations were the result of uncontrollable circumstances. *See* 35 Ill. Adm. Code 108.206.

The Board finds, however, that there is a deficiency with Bettis’s petition that must be remedied before the Board can accept this case for hearing. There is no indication that Bettis served a copy of the petition on the Agency. Under the Board’s procedural rules, Bettis was required to serve the petition on the Agency and to file proof of that service with the Board. *See* 35 Ill. Adm. Code 101.304. The Board directs Bettis to file a certificate of service with the Board documenting that Bettis served a copy of the petition on the Agency. If Bettis fails to file this document by July 5, 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 Bettis, imposing the \$3,000 penalty. *See* 35 Ill. Adm. Code 101.304(d).

If Bettis proceeds to contest the administrative citation but does not prevail on the merits of the case, Bettis will have to pay the hearing costs of the Board and the Agency in addition to the \$3,000 civil penalty. *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.

IT IS SO ORDERED.

I, John Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on June 3, 2010, by a vote of 5-0.



John Therriault, Assistant Clerk
Illinois Pollution Control Board