

ILLINOIS POLLUTION CONTROL BOARD
June 17, 2010

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
v.) AC 10-23
) (IEPA No. 132-10-AC)
JOHN H. and KATHY D. STILL,) (Administrative Citation)
)
Respondents.)

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

On April 30, 2010, Illinois Environmental Protection Agency (Agency) timely filed an administrative citation against Respondents John H. and Kathy D. Still (the Stills). See 415 ILCS 5/31.1(c) (2008)¹; 35 Ill. Adm. Code 101.300(b), 108.202(c). The administrative citation concerns the Stills' residential property located in the SE 1/4 of the SW 1/4 of SEC 23, T1S, R3W, 4th Prime Meridian. The property is commonly known to the Agency as the "Mt. Sterling/Still" site and is designated with Site Code No. 0098050005. For the reasons below, the Board accepts the Stills' 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 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 March 18, 2010, the Stills violated Sections 21(p)(1) and 21(p)(7) of the Act (415 ILCS 5/21(p)(1), (p)(7) (2008)) by causing or allowing the open dumping of waste in a manner resulting in litter and deposition of construction or demolition debris at the Stills' Brown County site. The Agency asks the Board to impose the statutory \$1,500 civil penalty for each violation, for a total of \$3,000, on the Stills.

As required, the Agency served the administrative citation on the Stills on April 28, 2010, 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 June 2, 2010. On June 2, 2010, the Stills timely filed a petition. See 415 ILCS 5/31.1(d) (2008); 35 Ill. Adm. Code 101.300(b), 108.204(b). The Stills allege three reasons for their petition: first, some of the photos of open dumping submitted were not taken on the Stills'

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.

property; second, the dumping cited was the result of circumstances beyond the Stills' control; and finally, the Stills could not clean up the site because they do not have access to the site during the winter, and subsequently there was a load limit on the road, preventing the Stills from getting the necessary equipment to the site. *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 Stills 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 Stills may withdraw their petition to contest the administrative citation at any time before the Board enters its final decision. If the Stills choose 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 Stills withdraw their petition after the hearing starts, the Board will require the Stills to pay the hearing costs of the Board and the Agency. *See id.* at 108.500(c).

The Agency 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 Stills violated Sections 21(p)(1) and 21 (p)(7) of the Act, the Board will impose civil penalties on the Stills. 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 Stills "ha[ve] 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 June 17, 2010, by a vote of 5-0.



John Therriault, Assistant Clerk
Illinois Pollution Control Board