

ILLINOIS POLLUTION CONTROL BOARD
August 19, 2010

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
v.) AC 11-01
) (IEPA No. 206-10-AC)
WILLIAM A. COGDILL,) (Administrative Citation)
)
Respondent.)

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

On July 23, 2010, the Illinois Environmental Protection Agency (Agency) timely filed an administrative citation against William A. Cogdill (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 at approximately 903 West Main Street, St. Francisville, Lawrence County. The property is commonly known to the Agency as the "St. Francisville/Cogdill, William" site and is designated with Site Code No. 1010255010. 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 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) (2006); 35 Ill. Adm. Code 108.

In this case, the Agency alleges that respondent violated Section 21(p)(1), of the Act (415 ILCS 5/21(p)(1) (2008)) on May 25, 2010, by causing or allowing the open dumping of waste in a manner resulting in litter. The Agency asks the Board to impose a \$1,500 civil penalty for respondent's alleged violation of Section 21(p).

As required, the Agency served the administrative citation on respondent within "60 days after the date of the observed violation." 415 ILCS 5/31.1(b) (2006); *see also* 35 Ill. Adm. Code 101.300(c), 108.202(b). Any petition to contest the administrative citation was due within 35 days after the date of service, *i.e.*, by August 13, 2010. On August 16, 2010, the Board received respondent's petition for review. *See* 415 ILCS 5/31.1(d) (2008); 35 Ill. Adm. Code 101.300(b), 108.204(b). The petition was timely filed because it was postmarked August 13, 2010. *See* 415 ILCS 5/40(a)(1) (2008); 35 Ill. Adm. Code 101.300(b), 105.208(a). Respondent denies causing or allowing the open dumping of waste in a manner resulting in litter "due to uncontrollable circumstances". Petition at 1; *see also* 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 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.

Respondent may withdraw his petition to contest the administrative citation at any time before the Board enters its final decision. If respondent chooses to withdraw his petition, he must do so in writing, unless he does so orally at hearing. *See* 35 Ill. Adm. Code 108.208. If respondent withdraws his petition after the hearing starts, the Board will require respondent 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 respondent violated Section 21(p) of the Act, the Board will impose civil penalties on respondent. Because the Act specifies the civil penalty for a violation in an administrative citation action, the Board cannot consider mitigating or aggravating factors when determining penalty amounts. *See, e.g., IEPA v. Stutsman*, AC 05-70, slip op. at 2 (Sept. 21, 2006). 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) (2006); *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 August 19, 2010, by a vote of 5-0.



John Therriault, Assistant Clerk
Illinois Pollution Control Board