

ILLINOIS POLLUTION CONTROL BOARD
January 6, 2011

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	
)	
v.)	AC 11-13
)	(IEPA No. 305-10-AC)
RAY NEWINGHAM,)	(Administrative Citation)
)	
Respondent.)	

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

On November 10, 2010, the Illinois Environmental Protection Agency (Agency) timely filed an administrative citation against Ray Newingham (Newingham). *See* 415 ILCS 5/31.1(c) (2008); 35 Ill. Adm. Code 101.300(b), 108.202(c). The administrative citation concerns Newingham’s property located at the southeast corner of the intersection of Worchester and Clay Streets in the City of Roodhouse, Greene County. The property is commonly known to the Agency as the “Roodhouse/Newingham” site and is designated with Site Code No. 0610355023. For the reasons below, the Board accepts Newingham’s petition to contest the administrative citation.

Under the Act, 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. *See* 415 ILCS 5/21(o), 21(p), 22.51, 22.51a, 31.1(c), 42(b)(4), 42(b)(4-5), 55(k) (2008); 35 Ill. Adm. Code 108.

In this case, the Agency alleges that on September 16, 2010, Newingham violated Sections 21(p)(1) and (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 the deposition of general or clean construction or demolition debris at the Greene County site. The Agency asks the Board to impose on Newingham the statutory civil penalty of \$1,500 per violation for a total civil penalty of \$3,000.

As required, the Agency served the administrative citation on Newingham 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 December 13, 2010. On December 29, 2010, the Board received Newingham’s petition. The petition was timely filed because it was postmarked on the filing deadline of December 13, 2010. *See* 415 ILCS 5/31.1(d) (2008); 35 Ill. Adm. Code 101.300(b)(2), 108.204(b). Newingham alleges that rains weakened the building on his site, causing the structure to collapse. According

to Newingham, the building collapse was beyond his control and the result of uncontrollable circumstances. *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, Newingham 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.

Newingham may withdraw the petition to contest the administrative citation at any time before the Board enters its final decision. If Newingham chooses to withdraw the petition, Newingham must do so in writing, unless done so orally at hearing. *See* 35 Ill. Adm. Code 108.208. If Newingham withdraws the petition after the hearing starts, the Board will require Newingham 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 Newingham violated Section 21(p)(1) or (p)(7), the Board will impose civil penalties on Newingham. The civil penalty for violating any provision of Section 21(p) 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 Newingham "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 January 6, 2011, by a vote of 5-0.



John Therriault, Assistant Clerk
Illinois Pollution Control Board