

ILLINOIS POLLUTION CONTROL BOARD
May 3, 2007

COUNTY OF JACKSON,)
)
 Complainant,)
)
 v.) AC 07-34
) (Administrative Citation)
 ALVIN VALDEZ and RUBEN J. VALDEZ,)
)
 Respondents.)

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

On January 31, 2007, the County of Jackson (County) filed an administrative citation against Alvin Valdez and Ruben J. Valdez (respondents). *See* 415 ILCS 5/31.1(c) (2004); 35 Ill. Adm. Code 108.202(c). The administrative citation concerns a site commonly known as “DeSoto/Alvin Valdez,” designated with Site Code No. 0778035022, and located in Jackson County. For the reasons below, the Board accepts the respondents’ petition to contest the administrative citation.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2004)), 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) (2004); 35 Ill. Adm. Code 108.

In this case, the County alleges that respondents violated Sections 21(p)(1) and (p)(3) of the Act (415 ILCS 5/21(p)(1), (3) (2004)) by causing or allowing the open dumping of waste in a manner resulting in litter and open burning. The County asks the Board to impose a \$3,000 civil penalty on respondents.

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. If a respondent fails to do so, the Board must find that the respondent committed the violation alleged and impose the corresponding civil penalty. *See* 415 ILCS 31.1(d)(1) (2004); 35 Ill. Adm. Code 108.204(b), 108.406. Here, respondents were served with the administrative citation on January 22, 2007. The Board received respondents’ petition on March 1, 2007. When the Board receives a petition after the 35-day deadline, the postmark date of that petition is considered its filing date under the Board’s procedural rules. *See* 35 Ill. Adm. Code 101.300(b)(2). The petition was timely filed within the 35-day appeal period because the petition was postmarked on the filing deadline of February 26, 2007.

On March 15, 2007, the Board accepted respondents' petition as timely filed, but found that the petition did not satisfy the Board's procedural rules because it failed to state any reason why respondents believe the administrative citation was improperly issued. *See* 35 Ill. Adm. Code 108.206. The Board therefore directed respondents to file an amended petition within 30 days stating the grounds on which they contest the administrative citation. *See* County of Jackson v. Dan Kimmel, AC 06-21 (Feb. 16, 2006).

On April 19, 2007, the Board received an amended petition stating the reasons for which respondents contest the administrative citation. The petition was timely filed within the 30-day period because the petition was postmarked on April 12, 2007.

The Board accepts the amended 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) (2004). By contesting the administrative citation, respondents may have to pay the hearing costs of the Board and the County. *See* 415 ILCS 5/42(b)(4-5) (2004); 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 504.

Respondents may withdraw their petition to contest the administrative citations at any time before the Board enters its final decision. If respondents 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 respondents withdraw their petition after the hearing starts, the Board will require respondents to pay the hearing costs of the Board and the County. *See id.* at 108.500(c).

As indicated above, the County has the burden of proof at hearing. *See* 415 ILCS 5/31.1(d)(2) (2004); 35 Ill. Adm. Code 108.400. If the Board finds that respondents have violated Section 21(p)(1) or (p)(3), the Board will impose civil penalties on respondents. 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) (2004); 35 Ill. Adm. Code 108.500(a). However, if the Board finds that respondents have "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) (2004); *see also* 35 Ill. Adm. Code 108.500(b).

IT IS SO ORDERED.

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on May 3, 2007, by a vote of _____.

John T. Therriault, Assistant Clerk
Illinois Pollution Control Board