

ILLINOIS POLLUTION CONTROL BOARD

June 18, 2009

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,)	
)	
)	
Complainant,)	
)	
v.)	AC 09-43
)	(IEPA No. 79-09-AC)
THE BLICKHAN FAMILY CORPORATION,)	(Administrative Citation)
INC. and BLICK'S CONSTRUCTION CO.)	
INC.,)	
)	
Respondents.)	

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

On May 8, 2009, the Illinois Environmental Protection Agency (Agency) timely filed an administrative citation against the Blickhan Family Corporation, Inc. (Blickhan) and Blick's Construction Co. Inc. (Blick's) (collectively respondents). *See* 415 ILCS 5/31.1(c) (2006); 35 Ill. Adm. Code 101.300(b), 108.202(c). The administrative citation concerns a property owned by Blickhan and operated by Blick's. The property is located at Lock and Dam Road in Quincy, Adams County, designated with Site Code No. 0010650031, and commonly known to the Agency as the "Quincy/Blick's Construction Co. Inc." site. For the reasons below, the Board accepts respondents' petition to contest the administrative citation.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2006)), 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 on March 17, 2009, respondents violated Sections 21(p)(1), (p)(3), and (p)(7) of the Act (415 ILCS 5/21(p)(1), (p)(3), (p)(7) (2006)) at the property by causing or allowing the open dumping of waste in a manner resulting in litter, open burning, and the deposition of general or clean construction or demolition debris. The Agency asks the Board to impose a \$4,500 civil penalty on respondents.

As required, the Agency served the administrative citation on respondents 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 from Blickhan by June 12, 2009, and from Blick's by June 16, 2009. On June 15, 2009, respondents filed a petition (Pet.) with the Board. The petition is considered timely because it was postmarked on Blickhan's June 12, 2009 filing deadline. *See* 415 ILCS 5/40(a)(1) (2006); 35 Ill.

Adm. Code 101.300(b)(2) ("mailbox rule"). Among other things, respondents' petition denies that respondents owned and operated an "open dump" or engaged in "open dumping." Pet. at 1-2. The petition also denies that materials observed on the subject property were waste, asserting that the materials were instead "valuable scrap metal and other materials being stored temporarily for later sale, reuse, or recycling." *Id.* The petition further asserts that additional materials on the property met the definition of "clean construction or demolition debris." *Id.* The Board accepts the petition for hearing.

The Board 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) (2006). By contesting the administrative citation, respondents may have to pay the hearing costs of the Board and the Agency. *See* 415 ILCS 5/42(b)(4-5) (2006); 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.

Respondents may withdraw their petition to contest the administrative citation 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 Agency. *See id.* at 108.500(c).

The Agency has the burden of proof at hearing. *See* 415 ILCS 5/31.1(d)(2) (2006); 35 Ill. Adm. Code 108.400. If the Board finds that respondents violated Sections 21(p)(1), (p)(3), or (p)(7) of the Act, 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) (2006); 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) (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 June 18, 2009, by a vote of 5-0.



John Therriault, Assistant Clerk
Illinois Pollution Control Board