

ILLINOIS POLLUTION CONTROL BOARD  
July 23, 2009

ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
 )  
Complainant, )  
 )  
v. ) AC 09-54  
 ) IEPA No. 118-09-AC  
RICHARD A. & DAVID J. KRUMHOLZ )  
d/b/a KRUMHOLZ BROTHERS )  
LANDSCAPING )  
 )  
Respondents. )

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

On June 10, 2009, the Illinois Environmental Protection Agency (Agency) filed an administrative citation against Richard A. Krumholz and David J. Krumholz d/b/a Krumholz Brothers Landscaping (respondents). *See* 415 ILCS 5/31.1(c) (2008);<sup>1</sup> 35 Ill. Adm. Code 108.202(c). The administrative citation concerns the respondents' facility located at 2115 E. Wilkins Drive, Medina Township, Peoria. The property is commonly known to the Agency as the "Peoria/Krumholz Brothers Landscaping" site and is designated with Site Code No. 1439105008. For the reasons below, the Board accepts respondents' 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 May 8, 2009, the respondents violated Sections 21(p)(1), (3), and (7) of the Environmental Protection Act (Act) (415 ILCS 5/21(p)(1), (3), and (7) (2008)) by causing or allowing the open dumping of waste in a manner resulting in litter, open burning, and deposition of construction or demolition debris at the Peoria site. The Agency asks the Board to impose the statutory penalty of \$1,500 per violation on the respondents.

As required, the Agency served the administrative citation on the respondents 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 July

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<sup>1</sup> 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.

14, 2009. On June 26, 2009, the respondents timely filed a petition. *See* 415 ILCS 5/31.1(d) (2008); 35 Ill. Adm. Code 101.300(b), 108.204(b). The respondents deny the alleged violations in the administrative citation. *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 respondents 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](http://www.ipcb.state.il.us). *See* 35 Ill. Adm. Code 108.504.

The respondents may withdraw their petition to contest the administrative citation at any time before the Board enters its final decision. If the respondents chose 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 respondents withdraw their petition after the hearing starts, the Board will require the 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) (2008); 35 Ill. Adm. Code 108.400. If the Board finds that the respondents violated Sections 21(p)(1), (3) and (7), the Board will impose civil penalties on the respondents. The civil penalty for violating any provision of subsection (p) of Section 21 is \$1,500 for each violation. *See* 415 ILCS 5/42(b)(4-5) (2008); 35 Ill. Adm. Code 108.500(a). However, if the Board finds that the 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) (2008); *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, hereby certify that the above order was adopted on July 23, 2009, by a vote of 5-0.



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John T. Therriault, Assistant Clerk  
Illinois Pollution Control Board