

ILLINOIS POLLUTION CONTROL BOARD
May 17, 2012

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	
)	
v.)	AC 12-39
)	(IEPA No. 78-12-AC)
CMH HOMES, INC. AND DAVID R.)	(Administrative Citation)
MOSER.,)	
)	
Respondents.)	

ORDER OF THE BOARD (by T.A. Holbrook):

On April 6, 2012, the Illinois Environmental Protection Agency (Agency) timely filed an administrative citation against CMH Homes, Inc. (CMH) and David R. Moser (collectively, respondents). *See* 415 ILCS 5/31.1(c) (2010); 35 Ill. Adm. Code 101.300(b), 108.202(c). The administrative citation concerns respondents' facility located at 1195 East Radio Tower Road, Mt. Vernon, Jefferson County. The property is commonly known to the Agency as the "Mt. Vernon/ CMH Homes, Inc." site and is designated with Site Code No. 0818105002. On May 10, 2012, CMH filed a petition to contest the administrative citation.

In this order, the Board accepts a petition for review filed by CMH and directs the hearing officer to proceed expeditiously to hearing on that petition. Also in this order, the Board finds that David R. Moser has defaulted but withholds issuing its final opinion and order until the Board makes its final determination regarding CMH.

LEGAL BACKGROUND

Under the Environmental Protection Act (Act) (415 ILCS 5 (2010)), 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), 21(p), 31.1(c), 42(b)(4), 42(b)(4-5), 55(k) (2010); 35 Ill. Adm. Code 108.

The Agency or delegated local authority must serve the administrative citation on the respondent within "60 days after the date of the observed violation." 415 ILCS 5/31.1(b) (2010); *see also* 35 Ill. Adm. Code 108.202(b). The Agency or delegated local authority must also file a copy of the administrative citation with the Board no later than ten days after serving the respondent. *See* 415 ILCS 5/31.1(c) (2010).

To contest the administrative citation, a respondent must file a petition with the Board no later than 35 days after being served with the administrative citation. If the respondent fails to do so, the Board must find that the respondent committed the violations alleged and impose the corresponding civil penalty. *See* 415 ILCS 31.1(d) (1) (2010); 35 Ill. Adm. Code 108.204(b), 108.406.

If the respondent timely contests the administrative citation, but the complainant proves the alleged violations at hearing, the respondent will be held liable not only for the civil penalty but also for the hearing costs of the Board and the complainant. *See* 415 ILCS 5/42(b)(4-5) (2010); 35 Ill. Adm. Code 108.500. However, if the Board finds that the 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) (2010); *see also* 35 Ill. Adm. Code 108.500(b).

DISCUSSION

On April 6, 2012, the Agency timely filed an administrative citation against the respondents. *See* 415 ILCS 5/31.1(c) (2010); 35 Ill. Adm. Code 108.202(c). The Agency alleges that respondents violated Sections 21(p)(1) and (p)(7) of the Act (415 ILCS 5/21(p)(1), (p)(7) (2010)). The Agency alleges that respondents violated these provisions 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. The Agency states that the inspection on which the citation is based occurred on March 13, 2012.

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) (2006); *see also* 35 Ill. Adm. Code 108.202(b). 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. On April 12, 2012, the Agency filed proof that it had timely served the administrative citation on both respondents on April 5, 2012. Any petition for review was due on or before May 10, 2012.

On May 10, 2012, respondent CMH timely filed a petition for review (Pet.). *See* 415 ILCS 5/31.1(d) (2010); 35 Ill. Adm. Code 101.300(b), 108.204(b). CMH alleges it did not cause or allow the alleged violations to take place on the property. Pet. at 2. CMH stated that its representative instructed Mr. Moser not to engage in bulldozing operations at the site. *Id.* CMH further states that “any conditions complained of in the Administrative Citation are believed to be the result of bulldozing activities by David R. Moser upon the property, which activities were directly contrary to the explicit direction given to David R. Moser by CMH Homes, Inc.”. Pet. at 2; *see* 35 Ill. Adm. Code 108.206.

The Board has not received a petition from David R. Moser. If a respondent fails to file a timely petition for review, the Board must find that the respondent committed the violations alleged and impose the corresponding statutory civil penalty. 415 ILCS 31.1(d) (1) (2010); 35 Ill. Adm. Code 108.204(b), 108.406. Accordingly, the Board finds that David R. Moser violated Sections 21(p)(1) and (p)(7) of the Act (415 ILCS 5/21(p)(1), (p)(7) (2010)). However, the Board will withhold a final order concerning David R. Moser until the Board reaches a final

determination regarding CMH. *See Illinois Environmental Protection Agency v. Ray Logsdon Estate, Logsdon Sand and Gravel, and M.K. O'Hara Construction, Inc.*, AC 05-54, slip op. at 3 (Apr. 21, 2005).

With regard to CMH, 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. 35 Ill. Adm. Code 108.300; *see also* 415 ILCS 5/31.1(d) (2) (2010). By contesting the administrative citation, CMH may have to pay the hearing costs of the Board and the Agency. *See* 415 ILCS 5/42(b) (4-5) (2010); 35 Ill. Adm. Code 108.500. A schedule of the Board's hearing costs is available at the Board's offices and on the Board's Web site at www.ipcb.state.il.us. 35 Ill. Adm. Code 108.504.

CMH may withdraw its petition to contest the administrative citation at any time before the Board enters its final decision. If CMH chooses to withdraw its petition, it must do so in writing, unless it does so orally at hearing. *See* 35 Ill. Adm. Code 108.208. If CMH withdraws its petition after the hearing starts, the Board will require CMH to pay the hearing costs of the Board and the Agency. *See* 35 Ill. Adm. Code 108.500(c).

CMH has the burden of proof at hearing. *See* 415 ILCS 5/31.1(d) (2) (2010); 35 Ill. Adm. Code 108.400. If the Board finds that CMH violated Sections 21(p)(1) and (p)(7) of the Act (415 ILCS 5/21(p)(1), (p)(7) (2010)), the Board will impose civil penalties on CMH. The civil penalty for violating Section 21(p) is \$1,500 for a first offense and \$3,000 for a second or subsequent offense. 415 ILCS 5/42(b) (4-5) (2010); 35 Ill. Adm. Code 108.500. Because there are two violations of Section 21(p) and no indication in the record that any of these is a second or subsequent adjudicated violation by either respondent, the total civil penalty is \$3,000. However, if the Board finds that CMH "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" against CMH. 415 ILCS 5/31.1(d) (2) (2010); *see also* 35 Ill. Adm. Code 108.500(b).

CONCLUSION

In today's order, the Board accepts as timely a petition for review filed by CMH. Also in today's order, the Board finds that David R. Moser has defaulted by failing to file a petition to contest the administrative citation. Accordingly, the Board finds that David R. Moser violated the Act as alleged. With regard to CMH, the Board directs the hearing officer to proceed expeditiously to hearing. The Board withholds issuing its final order regarding David R. Moser until the Board makes its final decision regarding CMH.

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 17, 2012, by a vote of 5-0.

A handwritten signature in black ink that reads "John T. Therriault". The signature is written in a cursive style with a long horizontal flourish at the end.

John T. Therriault, Assistant Clerk
Illinois Pollution Control Board