

ILLINOIS POLLUTION CONTROL BOARD
June 7, 2012

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
) AC 12-52
v.) (IEPA No. 10412-AC)
) (Administrative Citation)
J & R TIRE SERVICE INC.,)
)
Respondent.)

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

On May 7, 2012, the Illinois Environmental Protection Agency (Agency) timely filed an administrative citation against J & R Tire Service Inc. (J&R Tire). *See* 415 ILCS 5/31.1(c) (2010); 35 Ill. Adm. Code 101.300(b), 108.202(c). The administrative citation concerns J&R Tire’s facility located at 27 N. Madison Street, Carthage, Hancock County. The property is commonly known to the Agency as “J&R Tire Service, Inc.” and is designated with Site Code No. 0670250002. On June 4, 2012, J&R Tire filed a petition with the Board to contest the administrative citation. 35 Ill. Adm. Code 101.300(b)(2), 108.204(b). For the reasons below, the Board accepts J&R Tire’s petition as timely filed.

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 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) (2010); 35 Ill. Adm. Code 108.

In this case, the Agency alleges that on April 11, 2012, J&R Tire violated Section 55(k)(1) of the Act (415 ILCS 5/55(k)(1) (2010)) by causing or allowing water to accumulate in used or waste tires. The Agency asks the Board to impose on J&R Tire the statutory \$1,500.00 civil penalty for each alleged violation, for a total civil penalty of \$1,500.00.

As required, the Agency served the administrative citation on J&R Tire within “60 days after the date of the observed violation.” 415 ILCS 5/31.1(b) (2010); *see also* 35 Ill. Adm. Code 101.300(c), 108.202(b). Any petition to contest the administrative citation was due by June 11, 2012. On June 4, 2012, the Board received J&R Tire’s petition to contest the administrative citation. The petition alleges that J&R Tire did not necessarily cause or allow the amount of water within tires and did not have knowledge of the accumulated water. Additionally, the petition alleges that the tires in question have either been covered or drilled since the inspection to prevent water accumulation and that “refuse” observed in one tire resulted from the

environment and was not directly caused by J&R Tire. Lastly, the petition alleges that J&R Tire is not operating an open dump, and that it has been disposing of tires in accordance with the law since 2009.

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) (2010). By contesting the administrative citation, J&R Tire 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 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.

J&R Tire may withdraw its petition to contest the administrative citation at any time before the Board enters its final decision. If J&R Tire 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 J&R Tire withdraws its petition after the hearing starts, the Board will require J&R Tire to pay the hearing costs of the Board and Agency. *See id.* at 108.500(c).

The Agency 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 J&R Tire violated Section 55(k)(1), the Board will impose civil penalties on J&R Tire. The civil penalty for violating any provision of Section 55(k) 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) (2010); 35 Ill. Adm. Code 108.500(a). However, if the Board finds that J&R Tire "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).

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 June 7, 2012, by a vote of 5-0.



John T. Therriault, Assistant Clerk
Illinois Pollution Control Board