

ILLINOIS POLLUTION CONTROL BOARD  
November 15, 2012

ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Complainant,	)	
	)	
v.	)	AC 13-11
	)	(IEPA No. 206-12-AC)
HUGHES TIRE & BATTERY COMPANY,	)	(Administrative Citation)
	)	
Respondent.	)	

OPINION AND ORDER OF THE BOARD (by J.A. Burke):

On September 4, 2012, the Illinois Environmental Protection Agency (Agency) timely filed an administrative citation against Hughes Tire & Battery Company (respondent). *See* 415 ILCS 5/31.1(c) (2010); 35 Ill. Adm. Code 101.300(b), 108.202(c). The administrative citation concerns respondent's facility located at 730 31st Avenue, Suite 2, Milan, Rock Island County. The property is commonly known to the Agency as the "Hughes Tire-Brake & Retread" site and is designated with Site Code No. 1610656101. For the reasons below, the Board accepts respondent's amended petition to contest the administrative citation.

Under the Environmental Protection Act (Act) (415 ILC 5/1 *et seq.* (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. *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 July 27, 2012, respondent 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 at the Rock Island County site. The Agency asks the Board to impose on respondent the statutory \$3,000 civil penalty for the alleged violation, given it is respondent's second violation of Section 55(k)(1) of the Act. *See* IEPA v. Hughes Tire & Battery Company, AC 12-47 (June 7, 2012) (finding violation of section 55(k)(1)); IEPA v. Hughes Tire & Battery Company, AC 12-46 (June 7, 2012) (same). As required, the Agency served the administrative citation on respondent 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 October 4, 2012. On September 28, 2012, the Board received a letter from James H. Hughes, which the Board construed as a petition for review (petition). *See* 415 ILCS 5/31.1(d) (2010); 35 Ill. Adm. Code 101.300(b), 108.204(b). On October 4, 2012, the Board accepted the petition as timely, but directed respondent to file an amended petition curing specified deficiencies by November 5,

2012. IEPA v. Hughes Tire & Battery Company, AC 13-11 (Oct. 4, 2012). On November 9, 2012, the Board received an amended petition. The amended petition was timely filed because it was postmarked November 2, 2012. *See* 415 ILCS 5/31.1(d) (2010); 35 Ill. Adm. Code 101.300(b), 108.204(b). Respondent states it did not cause or allow a violation because “a few drops of water in one tire [do] not constitute a violation of the Act.” Am. Pet. at 2; *see also* 35 Ill. Adm. Code 108.206. Respondent adds that no larval mosquitoes were observed in the one used tire that contained water, indicating a recent accumulation. Am. Pet. at 1. Respondent also contends that “[t]he poor local economy created uncontrollable circumstances which prevented Respondent from complying with the Act.” *Id.* at 2.

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* 415 ILCS 5/31.1(d)(2) (2010); 35 Ill. Adm. Code 108.300. By contesting the administrative citation, respondent 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](http://www.ipcb.state.il.us). *See* 35 Ill. Adm. Code 108.504.

Respondent may withdraw its amended petition to contest the administrative citation at any time before the Board enters its final decision. If respondent chooses to withdraw its amended petition, it must do so in writing, unless it does so orally at hearing. *See* 35 Ill. Adm. Code 108.208. If respondent withdraws its amended petition after the hearing starts, the Board will require it 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) (2010); 35 Ill. Adm. Code 108.400. If the Board finds that respondent violated Section 55(k)(1) of the Act, the Board will impose civil penalties on it. 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 respondent’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 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).

IT IS SO ORDERED.

Member J. O’Leary Abstained

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on November 15, 2012 by a vote of 4-0.



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John T. Therriault, Assistant Clerk

Illinois Pollution Control Board