

ILLINOIS POLLUTION CONTROL BOARD

May 16, 2013

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	
)	
v.)	AC 13-41
)	(IEPA No. 57-13-AC)
ROBERT & TIA MIXER,)	(Administrative Citation)
)	
Respondents.)	

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

On March 28, 2013, the Illinois Environmental Protection Agency (Agency) timely filed an administrative citation against Robert and Tia Mixer (respondents). *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 immediately northwest of the intersection of Illinois Route 104 and East 1600th Street east of Quincy, Adams County (property). The property is commonly known to the Agency as the "Gilmer Township/Mixer" site and is designated with Site Code No. 0018085007. For the reasons below, the Board accepts respondents' petition to contest the administrative citation.

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. *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 February 4, 2013, respondents violated Section 21(p)(1) of the Act (415 ILCS 5/21(p)(1) (2010)) by causing or allowing the open dumping of waste in a manner resulting in litter at the property. The Agency asks the Board to impose on respondents the statutory \$1,500 civil penalty for each alleged violation, for a total civil penalty of \$1,500.

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) (2010); *see also* 35 Ill. Adm. Code 101.300(c), 108.202(b). Any petition to contest the administrative citation was due by May 8, 2013. On May 8, 2013, respondents timely filed a petition. *See* 415 ILCS 5/31.1(d) (2010); 35 Ill. Adm. Code 101.300(b), 108.204(b). Respondents state that they maintain the property at issue as part of an ongoing business and deny that they caused or allowed the alleged open dumping violations on the property. Pet. at 1. Respondents further state that none of the items listed and characterized as waste by the Agency is a waste, but rather are materials utilized

in the day-to-day operations of the business. *Id.* Respondents dispute the alleged violations of the Act. *Id.* at 2. *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) (2010). 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) (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.

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) (2010); 35 Ill. Adm. Code 108.400. If the Board finds that respondents violated Section 21(p)(1) of the Act (415 ILCS 5/21(p)(1) (2010)), the Board will impose civil penalties on respondents. The civil penalty for violating any provision of Section 21(p), 22.51, 22.51a, or 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 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) (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 May 16, 2013, by a vote of 5-0.



John T. Therriault, Assistant Clerk
Illinois Pollution Control Board