

ILLINOIS POLLUTION CONTROL BOARD  
September 19, 2013

ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
 )  
Complainant, )  
 )  
v. ) AC 13-42  
 ) (IEPA No. 86-13-AC)  
JAMES & PAM GREEN, ) (Administrative Citation)  
 )  
Respondents. )

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

On May 9, 2013, the Illinois Environmental Protection Agency (Agency) filed an administrative citation against James and Pamela Green addressing the Greens' property at 23280 Penrose Road in Coleta, Whiteside County. The Greens submitted a second amended petition contesting the citation which the Board received on September 10, 2013. The second amended petition was timely filed. The Board accepts the second amended petition for hearing.

The Agency alleges that on March 20, 2013, the Greens violated Sections 21(p)(1) and 55(k)(1) of the Act (415 ILCS 5/21(p)(1), 55(k)(1) (2012)) by causing or allowing the open dumping of waste resulting in litter and causing or allowing water to accumulate in used or waste tires. The Agency asks the Board to impose a \$1,500 penalty per violation on the Greens, for a total penalty of \$3,000.

A petition contesting an administrative citation must set forth recognized grounds for why a respondent believes that the administrative citation was improperly issued. *See* 35 Ill. Adm. Code 108.206. Those grounds include:

- a) the respondent does not own the property,
- b) the respondent did not cause or allow the alleged violation,
- c) the citation was not timely filed or properly served, or
- d) the alleged violation was the result of uncontrollable circumstances. 35 Ill. Adm. Code 108.206.

Under the Act, if the Board finds that a 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) (2012); *see also* 35 Ill. Adm. Code 108.500(b). If a respondent has caused or allowed open dumping, the respondent is not excused from liability under an administrative citation merely because the subsequent cleanup

may be hindered by extreme weather. *See* IEPA v. Marshall Pekarsky, AC 01-37 (Feb. 7, 2002), *rev'd sub nom. IEPA v. IPCB and Marshall Pekarsky*, No. 2-02-0281 (2nd Dist. Mar. 18, 2003) (unpublished order under Illinois Supreme Court Rule 23).

The Greens state that copies of the second amended petition have been sent to the Board as well as Susan E. Konzelmann. Sec. Am. Pet. at 1. Ms. Konzelmann, who prepared the administrative citation, is a legal assistant at the Illinois Environmental Protection Agency. James Green signed the second amended petition, however the Board notes that both Greens signed the first amended petition. Taking the three filed petitions together, the Board finds that the petition meets the requirements to contest the administrative citation.

The Board accepts the Greens' petition and directs the hearing officer to set a hearing date. The hearing officer will notify the parties of the hearing date at least 21 days in advance of the hearing. *See* 35 Ill. Adm. Code 108.300; 415 ILCS 5/31.1(d)(2) (2012). If the Greens do not succeed at hearing, the Greens may have to pay the hearing costs of the Board and the Agency. *See* 415 ILCS 5/42(b)(4-5) (2012); 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 Greens may withdraw their petition to contest the administrative citation at any time before the Board enters its final decision. If the Greens choose to withdraw their petition, they must do so in writing or orally at hearing. *See* 35 Ill. Adm. Code 108.208. If the Greens withdraw their petition after the hearing starts, the Board will require the Greens to pay the hearing costs of the Board and the Agency. *See* 35 Ill. Adm. Code 108.500(c).

The Agency is required to prove that the Greens violated the Act. *See* 415 ILCS 5/31.1(d)(2) (2012); 35 Ill. Adm. Code 108.400. If the Board finds that the Greens violated Sections 21(p)(1) and 55(k)(1) of the Act, the Board will impose civil penalties on the Greens. The civil penalty is \$1,500 for each violation. *See* 415 ILCS 5/42(b)(4-5) (2012); 35 Ill. Adm. Code 108.500(a).

IT IS SO ORDERED.

I, John T. Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on September 19, 2013, by a vote of 4-0.



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John T. Therriault, Clerk  
Illinois Pollution Control Board