

ILLINOIS POLLUTION CONTROL BOARD
May 7, 2015

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
v.) AC 15-33
) (IEPA No. 73-15-AC)
GERALD CAIN AND EDDIE JONES,) (Administrative Citation)
)
Respondent.)

ORDER OF THE BOARD (by C.K. Zalewski):

On March 17, 2015, the Illinois Environmental Protection Agency (Agency) timely filed an administrative citation against Gerald Cain and Eddie Jones (respondents). *See* 415 ILCS 5/31.1(c) (2012); 35 Ill. Adm. Code 101.300(b), 108.202(c). The administrative citation concerns Mr. Cain’s 89.92 acre facility located in Union County. The property is commonly known to the Agency as the “Ware/Cain-Jones” site and is designated with Site Code No. 1818645005. For the reasons below, the Board accepts Mr. Jones’ petition to contest the administrative citation.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2012)), 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) (2012); 35 Ill. Adm. Code 108.

In this case, the Agency alleges that on January 30, 2015, respondents violated Sections 21(p)(1), 21(p)(3), and 21(p)(7) of the Act (415 ILCS 5/21(p)(1), 21(p)(3), 21(p)(7) (2012)) by causing or allowing the open dumping of waste in a manner resulting in: 1) litter, 2) open burning, and 3) deposition of general construction or demolition debris or clean construction or demolition debris. 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 \$4,500.

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) (2012); *see also* 35 Ill. Adm. Code 101.300(c), 108.202(b). Any petition to contest the administrative citation was due to be filed by Mr. Cain on April 20, 2015, and any petition to contest the administrative citation was due to be filed by Mr. Jones on April 28, 2015. On April 13, 2015, Mr. Cain timely filed a petition. *See* 415 ILCS 5/31.1(d) (2012); 35 Ill. Adm. Code 101.300(b), 108.204(b). The Board accepted Mr. Cain’s petition for review in a Board order dated April 16, 2015. IEPA v. Gerald Cain and Eddie Jones, AC 15-33, (April 16, 2015). On May 4, 2014, Eddie Jones timely filed a

petition (Pet.). The petition was timely filed because it was postmarked on or before the filing deadline. *See* 415 ILCS 5/31.1(d) (2012); 35 Ill. Adm. Code 101.300(b), 108.204(b). In the petition, Mr. Jones alleges that he “did not own all the personal property that was subject of this alleged violation.” Pet. at 1. Mr. Jones also asserts that he “didn’t realize it was against the law,” and he is working to clean up the site. *Id.*

The Board accepts Mr. Jones’ 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) (2012). The Board notes that voluntary cleanups performed by a respondent are generally neither a defense to the violations alleged nor relevant to determining the civil penalty amount. *See* IEPA v. Jack Wright, AC 89-227, slip op. at 7 (Aug. 30, 1990) (“The Act, by its terms, does not envision a properly issued administrative citation being dismissed or mitigated because a person is cooperative or voluntarily cleans-up the site”). By contesting the administrative citation, Mr. Jones 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. *See* 35 Ill. Adm. Code 108.504.

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

The Agency has the burden of proof at hearing. *See* 415 ILCS 5/31.1(d)(2) (2012); 35 Ill. Adm. Code 108.400. If the Board finds that respondents violated Sections 21(p)(1), 21(p)(3) and 21(p)(7) of the Act, the Board will impose civil penalties on respondents. The civil penalty for violating any provision of Section 21(p) of the Act is \$1,500 for each violation. *See* 415 ILCS 5/42(b)(4-5) (2012); 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) (2012); *see also* 35 Ill. Adm. Code 108.500(b).

IT IS SO ORDERED.

I, John T. Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on May 7, 2015, by a vote of 5-0.



John T. Therriault, Clerk
Illinois Pollution Control Board