

ILLINOIS POLLUTION CONTROL BOARD

January 5, 2006

ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Complainant,	)	
	)	
v.	)	AC 06-16
	)	AC 06-17
REX D. EVANS AND ROY W. EVANS, JR.,	)	(IEPA No. 442-05-AC)
	)	(IEPA No. 443-05-AC)
Respondents.	)	(Administrative Citation)
	)	(Consolidated)

ORDER OF THE BOARD (by N.J. Melas):

On November 14, 2005, the Illinois Environmental Protection Agency (Agency) timely filed an administrative citation against Mr. Rex D. Evans and Mr. Roy W. Evans, Jr. (collectively, the respondents). *See* 415 ILCS 5/31.1(c) (2004); 35 Ill. Adm. Code 108.202(c). The Agency alleges that the respondents violated Section 21(p)(1) and (7) of the Environmental Protection Act (415 ILCS 5/21(p)(1), (7) (2004)). The Agency further alleges that the respondents violated these provisions by operating an unpermitted open dump, resulting in litter and the deposition of general or clean construction or demolition debris, at their property located in Murrayville, Morgan County.

Also on November 14, 2005, the Agency timely filed a second administrative citation against the respondents, docketed as IEPA v. Mr. Rex D. Evans and Mr. Roy W. Evans, Jr., (AC 06-17). In AC 06-27, the Agency alleges on violation of Section 21(p)(1) of the Act (415 ILCS 5/21(p)(1) (2004)). The Agency alleges that the respondents violated this provision by operating an unpermitted open dump, resulting in litter, at their property located in Murrayville, Morgan County. Today the Board accepts both petitions and consolidates them for hearing.

As required, the Agency served the administrative citation on the respondents within “60 days after the date of the observed violation.” 415 ILCS 5/31.1(b) (2004); *see also* 35 Ill. Adm. Code 108.202(b). On December 14, 2005, the respondents timely filed a petition to contest the administrative citation. *See* 415 ILCS 5/31.1(d) (2004); 35 Ill. Adm. Code 108.204(b). The respondents allege that the Agency “mistakenly characterizes the Respondents’ facility as two separate facilities” when the two facilities are really only one. The respondents further allege that some of the violations alleged are the result of uncontrollable circumstances, and that the deposition of fly ash on respondents’ property was done only after obtaining approval from the Agency. *See* 35 Ill. Adm. Code 108.206.

The respondents request that the Board consolidate the alleged violations into one administrative citation and reduce the applicable penalties accordingly. On January 3, 2006, the Agency responded to the motion to consolidate. The Agency does not object to consolidation,

finding that it would be in the interest of convenient, expeditious, and complete determination of the claims. The Agency disputes, however, the respondents' claim that the two cases apply to a single facility.

The Board accepts the petitions for hearing. Pursuant to Board rules, the Board will consolidate proceedings if consolidation is in the interest of convenient, expeditious and complete determination of claims, and if the consolidation would not cause material prejudice to any party. 35 Ill. Adm. Code 101.406. The Board finds that consolidation of AC 06-16 and AC 06-17 will not materially prejudice any party, and will assist in the expeditious and complete determination of the claims before us. As reflected in the caption above, the Board grants the respondents' motion to consolidate these administrative citations for hearing, but not necessarily for decision. The Board does not, however, dismiss any alleged violations or consolidate the alleged violations into *one* administrative citation at this time.

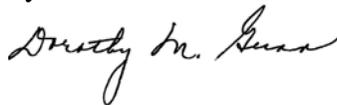
The Board directs the hearing officer to proceed expeditiously to hearing. The hearing officer will give the parties at least 21 days written notice of the hearing. 35 Ill. Adm. Code 108.300; *see also* 415 ILCS 5/31.1(d)(2) (2004). By contesting the administrative citation, the respondents may have to pay the hearing costs of the Board and the Agency. *See* 415 ILCS 5/42(b)(4-5) (2004); 35 Ill. Adm. Code 108.500. A schedule of the Board's hearing costs is available at the Board's offices and on the Board's Web site at [www.ipcb.state.il.us](http://www.ipcb.state.il.us). 35 Ill. Adm. Code 504.

The respondents may withdraw its petition to contest the administrative citation at any time before the Board enters its final decision. If either respondent chooses to withdraw the petition, he must do so in writing, unless he does so orally at hearing. *See* 35 Ill. Adm. Code 108.208. If the respondents withdraw the petition after the hearing starts, the Board will require the 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) (2004); 35 Ill. Adm. Code 108.400. If the Board finds that the respondents violated Sections 21(p)(1) and (7), the Board will impose civil penalties on the respondents. The civil penalty for violating Section 21(p) is \$1,500 for a first offense and \$3,000 for a second or subsequent offense. 415 ILCS 5/42(b)(4-5) (2004); 35 Ill. Adm. Code 108.500. However, if the Board finds that either 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) (2004); *see also* 35 Ill. Adm. Code 108.500(b).

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on January 5, 2006, by a vote of 4-0.



Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board