

ILLINOIS POLLUTION CONTROL BOARD
March 15, 2007

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	
)	
v.)	AC 07-36
)	(IEPA No. 29-07-AC)
LAWRENCE ABRAHAM)	AC 07-37
BARTOLOMUCCI,)	(IEPA No. 30-07-AC
)	AC 07-38
Respondent.)	(IEPA No. 31-07-AC
)	(Administrative Citation)
)	(Consolidated)

ORDER OF THE BOARD (by G.T. Girard):

On February 7, 2007, the Illinois Environmental Protection Agency timely filed three administrative citations against Lawrence Abraham Bartolomucci (Bartolomucci). *See* 415 ILCS 5/31.1(c) (2004); 35 Ill. Adm. Code 108.202(c). The Board docketed the three administrative citations as AC 07-36, AC 07-37, and AC 07-38. The administrative citations concern three sites allegedly formerly owned and operated by Bartolomucci. The sites are located in Mt. Vernon, Jefferson County. Bartolomucci filed a single petition on his own behalf, seeking to contest all three administrative citations. For the reasons below, the Board accepts Bartolomucci's petition to contest the administrative citations. The Board also consolidates the three proceedings for purposes of hearing, but not necessarily for decision.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2004)), 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 at sanitary landfills or unpermitted open dumps. *See* 415 ILCS 5/3.305, 3.445, 21(o), (p), 31.1(c), 42(b)(4), (4-5) (2002); 35 Ill. Adm. Code 108.

AC 07-36 concerns a site commonly known to the Agency as "Beard, Benny (formerly Bartolomucci, Abe)" and designated with Site Code No. 0818085004. In this administrative citation, the Agency alleges that Bartolomucci violated Sections 21(p)(1) and (p)(7) of the Act by causing or allowing the open dumping of waste in a manner resulting in litter and the deposition of general or clean construction or demolition debris. *See* 415 ILCS 5/21(p)(1), (p)(7) (2004). In AC 07-36, the Agency asks the Board to impose on Bartolomucci a \$1,500 civil penalty for each of the two alleged violations, for a total civil penalty of \$3,000.

AC 07-37 concerns a site commonly known to the Agency as "Mt. Vernon/Ortiesen (formerly Bartolomucci, Abe)" and designated with Site Code No. 0818035004. In this

administrative citation, the Agency alleges that Bartolomucci violated Section 21(p)(1) of the Act by causing or allowing the open dumping of waste in a manner resulting in litter. *See* 415 ILCS 5/21(p)(1) (2004). In AC 07-37, the Agency asks the Board to impose on Bartolomucci a \$1,500 civil penalty for the alleged violation.

AC 07-38 concerns a site commonly known to the Agency as “Dycus-Adams (formerly Bartolomucci, Abe)” and designated with Site Code No. 0818080002. In this administrative citation, the Agency alleges that Bartolomucci violated Sections 21(p)(1) and (p)(7) of the Act by causing or allowing the open dumping of waste in a manner resulting in litter and the deposition of general or clean construction or demolition debris. *See* 415 ILCS 5/21(p)(1), (p)(7) (2004). In AC 07-38, the Agency asks the Board to impose on Bartolomucci a \$1,500 civil penalty for each of the two alleged violations, for a total civil penalty of \$3,000.

As required, the Agency served each of the three administrative citations on Bartolomucci within “60 days after the date of the observed violation.” 415 ILCS 5/31.1(b) (2002~~9~~); *see also* 35 Ill. Adm. Code 101.300(c), 108.202(b). On March 12, 2007, Bartolomucci timely filed a petition on his own behalf, seeking to contest the three administrative citations. *See* 415 ILCS 5/31.1(d) (2004); 35 Ill. Adm. Code 108.204(b). Bartolomucci alleges that he has “never operated an open waste site.” Petition (Pet.) at 1. The petition further states that Bartolomucci had no control over the piles of materials, which were caused either by the auctioneer’s staff or the new landowners. *Id.*; *see also* 35 Ill. Adm. Code 108.206. In the petition, Bartolomucci describes his continuing serious health problems and states that his “letter of petition covers all violations and charges that have been filed against me.” Pet. at 4.

The Board accepts the petition for hearing and, for the reasons below, consolidates AC 07-36, AC 07-37, and AC 07-38 for purposes of hearing. Under the Board’s procedural rules:

The Board, upon the motion of any party or upon its own motion, may consolidate two or more proceedings for the purpose of hearing or decision or both. The Board will consolidate the proceedings if consolidation is in the interest of convenient, expeditious, and complete determination of claims, and if consolidation would not cause material prejudice to any party. The Board will not consolidate proceedings where the burdens of proof vary. 35 Ill. Adm. Code 101.406.

Here, all of the administrative citations involve the same parties and concern sites in Mt. Vernon, Jackson County. Additionally, in each of these proceedings, the Agency has the burden to prove one or more alleged open dumping violations. Moreover, the three administrative citations are based on site inspections conducted by the same Agency inspector on the same day. Under these circumstances, the Board finds that consolidating the three proceedings for purposes of hearing would serve the interests articulated above in Section 101.406 of the Board’s procedural rules. The Board therefore, on its own motion, consolidates these three administrative citation proceedings for purposes of hearing, but not necessarily for decision. *See County of Jackson v. Egon Kamarasy*, AC 04-63, AC 04-64 (cons.) (Sept. 2, 2004).

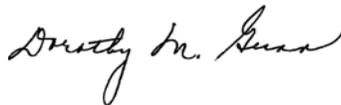
The Board directs the hearing officer to proceed expeditiously to hearing. The hearing officer will give the parties at least 21 days written notice of the hearing. *See* 35 Ill. Adm. Code 108.300; 415 ILCS 5/31.1(d)(2) (2004). By contesting the administrative citation, Bartolomucci may have to pay the 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 from the Clerk of the Board and on the Board's Web site at www.ipcb.state.il.us. *See* 35 Ill. Adm. Code 504.

Bartolomucci may withdraw his petition to contest the administrative citations at any time before the Board enters its final decision. If Bartolomucci 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 Bartolomucci withdraws his petition after the hearing starts, the Board will require Bartolomucci to pay the hearing costs of the Board and the Agency. *See id.* at 108.500(c).

As indicated above, 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 Bartolomucci has violated Section 21(p)(1) or (p)(7), the Board will impose civil penalties on Bartolomucci. The civil penalty for violating any provision of subsection (p) of Section 21 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) (2004); 35 Ill. Adm. Code 108.500(a). However, if the Board finds that Bartolomucci "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 March 15, 2007, 2007, by a vote of 4-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board