

ILLINOIS POLLUTION CONTROL BOARD  
July 12, 2007

ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
 )  
Complainant, )  
 )  
v. ) AC 07-62  
 ) (IEPA No. 156-07-AC)  
JOHN A. & KAY E. OLDHAM, ) (Administrative Citation)  
 )  
Respondents. )

ORDER OF THE BOARD (by T.E. Johnson):

On May 25, 2007, the Illinois Environmental Protection Agency (Agency) timely filed an administrative citation against John A. and Kay E. Oldham (respondents). *See* 415 ILCS 5/31.1(c) (2006); 35 Ill. Adm. Code 108.202(c). The administrative citation concerns a site commonly known to the Agency as “Xenia/Oldham, John A. & Kay E.,” designated with Site Code No. 0258070001, and located at 693 Oskaloosa Road, in rural Xenia, Clay County. For the reasons below, the Board accepts respondents’ petition to contest the administrative citation.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2006)), 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) (2006); 35 Ill. Adm. Code 108.

In this case, the Agency alleges that respondents 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) (2006). The Agency asks the Board to impose on respondents 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 the administrative citation on respondents within “60 days after the date of the observed violation.” 415 ILCS 5/31.1(b) (2006); *see also* 35 Ill. Adm. Code 108.202(b). On June 27, 2007, respondents timely filed a petition to contest the administrative citation. *See* 415 ILCS 5/31.1(d) (2006); 35 Ill. Adm. Code 108.204(b). Respondents deny that their property “is an open dump requiring an Agency operating permit.” Petition at 1. Respondents further deny that they caused or allowed the alleged open dumping, “which, if such occurred as alleged, was a result of uncontrollable circumstances.” *Id.* at 2, citing 35 Ill. Adm. Code 108.209(b), (d).

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) (2006). 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) (2006); 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.

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) (2006); 35 Ill. Adm. Code 108.400. If the Board finds that respondents violated Section 21(p)(1) or (p)(7) of the Act, the Board will impose civil penalties on respondents. 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 respondent's second or subsequent adjudicated violation of that provision. *See* 415 ILCS 5/42(b)(4-5) (2006); 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) (2006); *see also* 35 Ill. Adm. Code 108.500(b).

IT IS SO ORDERED.

I, John Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on July 12, 2007, by a vote of 4-0.



---

John Therriault, Assistant Clerk  
Illinois Pollution Control Board