

ILLINOIS POLLUTION CONTROL BOARD
December 20, 2007

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCYYY,)
)
Complainant,)
)
v.) AC 08-9
) (IEPA No. 319-AC-07)
GENE and ELENA GREENWOOD,) (Administrative Citation)
)
Respondents.)

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

On October 23, 2007, the Illinois Environmental Protection Agency (Agency) timely filed an administrative citation against Gene and Elena Greenwood (the Greenwoods). *See* 415 ILCS 5/31.1(c) (2006); 35 Ill. Adm. Code 108.202(c). The administrative citation concerns the Greenwoods' property in Goreville, Williamson County, commonly known to the Agency as Goreville/Gen Cycle Services and designated with Site Code 1998605006. For the reasons below, the Board accepts the Greenwoods' 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 the Greenwoods violated Sections 21(p)(1), (p)(3), and (p)(7) of the Act, 415 ILCS 5/21(p)(1), (p)(3), and (p)(7) (2006), at the Greenwoods' Williamson County site. The Agency asks the Board to impose a \$4,500 civil penalty on the Greenwoods.

As required, the Agency served the administrative citation on the Greenwoods within "60 days after the date of the observed violation." 415 ILCS 5/31.1(b) (2006); *see also* 35 Ill. Adm. Code 101.300(c), 108.202(b). Any petition to contest the administrative citation was due by November 26, 2007. On November 13, 2007, the Greenwoods timely filed a petition to contest the administrative citation. *See* 415 ILCS 5/31.1(d) (2006); 35 Ill. Adm. Code 101.300(b), 108.204(b). The Greenwoods allege that they did not cause or allow open dumping, and that the other violations were due to ignorance and lack of funds, also stating that they cannot afford to both perform a proper clean-up and also pay the requested fine. *See* 35 Ill. Adm. Code 108.206.

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, the Greenwoods may have to pay the hearing costs of the Board and the Agency. See 415 ILCS 5/42(b)(4) (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. See 35 Ill. Adm. Code 108.504.

The Greenwoods may withdraw their petition to contest the administrative citation at any time before the Board enters its final decision. If the Greenwoods 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 the Greenwoods withdraw their petition after the hearing starts, the Board will require them to pay the hearing costs of the Board and the Agency. See 35 Ill. Adm. Code 108.500(c).

The Greenwoods have 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 the Greenwoods violated any or all of the provisions of the Act as alleged, the Board will impose civil penalties on the Greenwoods. 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) (2006); 35 Ill. Adm. Code 108.500(a). However, if the Board finds that the Greenwoods 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).¹

IT IS SO ORDERED.

I, John Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on December 20, 2007, by a vote of 4-0.



John Therriault, Assistant Clerk
Illinois Pollution Control Board

¹ In other words, if the Board were to find the Greenwoods violated any provision of the Act as alleged, the Act does not give the Board the option to order *either* a cleanup *or* payment of the fine, as the Greenwoods suggest. Any finding of violation would require the Greenwoods to pay the statutory penalty of \$1,500 per violation, and payment of the penalty would not prevent future prosecution if the violation continues.