

ILLINOIS POLLUTION CONTROL BOARD
September 3, 2009

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	
)	
v.)	AC 09-41
)	(IEPA No. 65-09-AC)
MARK A. LEWIS,)	(Administrative Citation)
)	
Respondent.)	

ORDER OF THE BOARD (by S.D. Lin):

On May 6, 2009, the Illinois Environmental Protection Agency (Agency) timely filed an administrative citation against Mark A. Lewis (respondent). *See* 415 ILCS 5/31.1(c) (2008); 35 Ill. Adm. Code 101.300(b), 108.202(c). The administrative citation concerns Mr. Lewis's residential property located at 1835 Bunnyville Drive in Clay City, Clay County. This property is commonly known to the Agency as the "Clay City/Lewis, Mark A" site, designated with Site Code No. 0258025002. For the reasons below, the Board accepts for hearing the respondent's second amended petition to contest the administrative citation.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2008)), 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) (2008); 35 Ill. Adm. Code 108.

In this case, the Agency alleges that Mr. Lewis violated Section 21(p)(1) of the Act (415 ILCS 5/21(p)(1) (2008)) by causing or allowing the open dumping of waste in a manner resulting in litter at his Clay County site. The Agency further alleges that this violation is Mr. Lewis's second or subsequent violation of Section 21(p)(1) and therefore asks the Board to impose a \$3,000 civil penalty on Mr. Lewis

On June 8, 2009, the Board received Mr. Lewis's initial petition to contest the administrative citation (Pet.). The petition was considered timely filed because it was postmarked on or before the filing deadline. *See* 35 Ill. Adm. Code 101.300(b)(2) ("mailbox rule"). In the petition, Mr. Lewis stated, among other things, that he is using or plans to use most of the vehicles that were photographed during the Agency's April 1, 2009 site inspection of his property. Pet. at 1-2. The Board accepted the petition as timely, but directed the respondent to cure certain deficiencies in the petition. IEPA v. Lewis, AC 09-41 (June 18, 2009).

On July 8, 2009, respondent filed a first amended petition curing the petition's deficiency with respect to service on the Agency. Am. Pet. at 1. *See* 35 Ill. Adm. Code 108.206. The Board accepted the amended petition, but directed the respondent to cure the remaining deficiencies. *IEPA v. Lewis*, AC 09-41 (July 23, 2009). Respondent filed a second amended petition on August 26, 2009. Respondent states that the violation "resulted from uncontrollable circumstances". Second Am. Pet. at 1.

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) (2008). 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) (2008); 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 respondent may withdraw his petition to contest the administrative citation at any time before the Board enters its final decision. If the respondent 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 the respondent withdraws his petition after the hearing starts, the Board will require the respondent to pay the hearing costs of the Board and Agency. *See id.* at 108.500(c).

The Agency has the burden of proof at hearing. *See* 415 ILCS 5/31.1(d)(2) (2008); 35 Ill. Adm. Code 108.400. If the Board finds that the respondent violated Section 21(p)(1) of the Act, the Board will impose civil penalties on the respondent. 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) (2008); 35 Ill. Adm. Code 108.500(a). However, if the Board finds that the 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) (2008); *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 September 3, 2009, by a vote of 4-0.



John Therriault, Assistant Clerk
Illinois Pollution Control Board