

ILLINOIS POLLUTION CONTROL BOARD
July 15, 2010

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	
)	
v.)	AC 10-28
)	(IEPA No. 164-10-AC)
GARY J. and JAMES R. SZCZEBLEWSKI,)	(Administrative Citation)
)	
Respondents.)	

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

On June 4, 2010, the Illinois Environmental Protection Agency (Agency) timely filed an administrative citation against Gary J. and James R. Szczeblewski (Szczeblewskis). *See* 415 ILCS 5/31.1(c) (2008); 35 Ill. Adm. Code 101.300(b), 108.202(c). The administrative citation concerns the Szczeblewskis' property located at 402 East Yung Road in Sesser, Franklin County. The property is commonly known to the Agency as the "Sesser/Szczeblewski, Gary J. and James R." site and is designated with Site Code No. 0550455034. For the reasons below, the Board accepts the Szczeblewskis' 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), 55(k), 31.1(c), 42(b)(4), (4-5) (2008); 35 Ill. Adm. Code 108.

In this case, the Agency alleges that on April 21, 2010, the Szczeblewskis violated Sections 21(p)(1), (p)(3), and (p)(7) of the Act (415 ILCS 5/21(p)(1), (p)(3), (p)(7) (2008)) by causing or allowing the open dumping of waste in a manner resulting in litter, open burning, and the deposition of general or clean construction or demolition debris at the Szczeblewskis' Franklin County site. Because the administrative citation alleges second or subsequent violations of Sections 21(p)(1) and (p)(7) of the Act, the Agency asks the Board to impose the statutory civil penalty of \$3,000 on the Szczeblewskis for each of those two alleged violations. *See* 415 ILCS 5/42(b)(4-5) (2008). The Agency also asks that the Board impose the statutory civil penalty of one \$1,500 on the Szczeblewskis for their alleged violation of Section 21(p)(3) of the Act. *Id.* Accordingly, the Agency seeks a total civil penalty of \$7,500.

As required, the Agency served the administrative citation on the Szczeblewskis within "60 days after the date of the observed violation." 415 ILCS 5/31.1(b) (2008); *see also* 35 Ill. Adm. Code 101.300(c), 108.202(b). Any petition to contest the administrative citation was due by July 8, 2010. On July 8, 2010, the Szczeblewskis timely filed a petition. *See* 415 ILCS

5/31.1(d) (2008); 35 Ill. Adm. Code 101.300(b), 108.204(b). The Szczeblewskis allege that a previous administrative citation was pending before the Board when this citation issued. The Szczeblewskis maintain that the Board entered a final judgment in the prior citation on June 3, 2010, "for the same [site] and for similar violations." Petition at 1. According to the petition, before issuance of the instant citation, the Szczeblewskis were in the process of cleaning up the site. The Szczeblewskis claim that during the cleanup process, the Agency was called to the site to view the procedure being followed. The Szczeblewskis further allege that there had been discussions between the Agency and the Szczeblewskis as to the procedure for properly disposing of the materials. *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) (2008). By contesting the administrative citation, the Szczeblewskis 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 Szczeblewskis may withdraw their petition to contest the administrative citation at any time before the Board enters its final decision. If the Szczeblewskis 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 Szczeblewskis withdraw their petition after the hearing starts, the Board will require the Szczeblewskis 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) (2008); 35 Ill. Adm. Code 108.400. If the Board finds that the Szczeblewskis violated Section 21(p)(1), (p)(3) or (p)(7) of the Act, the Board will impose civil penalties on the Szczeblewskis. However, if the Board finds that the Szczeblewskis 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) (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 July 15, 2010, by a vote of 5-0.



John Therriault, Assistant Clerk
Illinois Pollution Control Board