

ILLINOIS POLLUTION CONTROL BOARD
March 1, 2012

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	
)	
v.)	AC 12-29
)	(IEPA No. 5-12-AC)
H&M SALVAGE & DISCOUNT CO. and)	(Administrative Citation)
CARL HAGLER,)	
)	
Respondents.)	

ORDER OF THE BOARD (by T. A. Holbrook):

On January 31, 2012, the Illinois Environmental Protection Agency (Agency) timely filed an administrative citation against H&M Salvage & Discount Co. and Carl Hagler (collectively, respondents). *See* 415 ILCS 5/31.1(c) (2010); 35 Ill. Adm. Code 101.300(b), 108.202(c). The administrative citation concerns respondents' facility located at 313 U.S. Highway 51, DuQuoin, Perry County. The property is commonly known to the Agency as the "DuQuoin/H&M Salvage & Discount Company" site and is designated with Site Code No. 1458115011. For the reasons below, the Board accepts respondents' petition to contest the administrative citation.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2010)), 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. *See* 415 ILCS 5/21(o), 21(p), 22.51, 22.51a, 31.1(c), 42(b)(4), 42(b)(4-5), 55(k) (2010); 35 Ill. Adm. Code 108.

In this case, the Agency alleges that, on December 1, 2011, respondents violated Sections 21(p)(1), 21(p)(7), and 55(k)(1) of the Act (415 ILCS 5/21(p)(1), 21(p)(7), 55(k)(1) (2010)) by causing or allowing the open dumping of waste in a matter that resulted in litter, in the deposition of general or clean construction or demolition debris, and in used tires at the site accumulating water. The Agency asks the Board to impose on respondents the statutory \$1,500.00 civil penalty for each alleged violation for a total civil penalty of \$4,500.00.

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) (2010); *see also* 35 Ill. Adm. Code 101.300(c), 108.202(b). Any petition to contest the administrative citation was due by March 6, 2012. On February 24, 2012, respondents timely filed a petition. *See* 415 ILCS 5/31.1(d) (2010); 35 Ill. Adm. Code 101.300(b), 108.204(b). Respondents allege that they did not cause or allow the alleged violations, that the alleged violations were the result of

uncontrollable circumstances, and that respondents have removed the used tires from the site. *See* 35 Ill. Adm. Code 108.206.

While respondents' post-citation cleanup is not a valid defense under the Board's regulations, the Board accepts the petition based on respondents' other alleged defenses and directs the hearing officer to proceed expeditiously to hearing. *See* 35 Ill. Adm. Code 108.206. 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) (2010). 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) (2010); 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.

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 respondent withdraws 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) (2010); 35 Ill. Adm. Code 108.400. If the Board finds that respondents violated Sections 22(p)(1), 22(p)(7), and 55(k)(1) of the Act, the Board will impose civil penalties on respondents. The civil penalty for violating any provision of Section 21(p) or 55(k) is \$1,500 for each violation. *See* 415 ILCS 5/42(b)(4-5) (2010); 35 Ill. Adm. Code 108.500(a). However, if the Board finds that 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) (2010); *see also* 35 Ill. Adm. Code 108.500(b).

IT IS SO ORDERED.

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on March 1, 2012, by a vote of 5-0.



John T. Therriault, Assistant Clerk
Illinois Pollution Control Board