

ILLINOIS POLLUTION CONTROL BOARD
October 4, 2012

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
v.) AC 13-7
) (IEPA No. 175-12-AC)
ROBERT MANKER,) (Administrative Citation)
)
Respondent.)

ORDER OF THE BOARD (by C. K. Zalewski):

On July 23, 2012, the Illinois Environmental Protection Agency (Agency) timely filed an administrative citation against Robert Manker (Manker). *See* 415 ILCS 5/31.1(c) (2010); 35 Ill. Adm. Code 101.300(b), 108.202(c). The administrative citation concerns Manker’s facility located at 2287 West Street, Literberry, Madison County. The property is commonly known to the Agency as the “Literberry/Manker” site and is designated with Site Code No. 1378580003.

On August 14, 2012, the Board received a timely petition to contest the administrative citation from Manker. In an order dated August 23, 2012, the Board accepted the petition but directed Manker to file an amended petition curing identified deficiencies. On September 27, 2012, respondent timely filed an amended petition. For the reasons below, the Board accepts the amended 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 June 6, 2012, Manker violated Sections 21(p)(1), 21(p)(3) and 21(p)(7) of the Act, 415 ILCS 5/21(p)(1), (p)(3), (p)(7) (2010), by causing or allowing the open dumping of waste in a manner resulting in litter, open burning, and in deposition of general construction or demolition debris or clean construction or demolition debris. The Agency asks the Board to impose on Manker the statutory \$1,500.00 civil penalty for each alleged violations, for a total civil penalty of \$4,500.00.

As required, the Agency served the administrative citation on Manker 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). As noted above, the Board on August 14, 2012, received a petition from Manker to contest the administrative citation. The Board accepted the petition as timely filed,

but found that it contained deficiencies that must be remedied before the case could be accepted for hearing. On September 27, 2012, Manker timely filed an amended petition. The amended petition was timely filed because it was postmarked on the filing deadline. *See* 415 ILCS 5/31.1(d) (2010); 35 Ill. Adm. Code 101.300(b), 108.204(b).

The Board accepts the amended 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) (2010). By contesting the administrative citation, Manker 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.

Manker may withdraw his amended petition to contest the administrative citation at any time before the Board enters its final decision. If Manker chooses to withdraw his amended petition, he must do so in writing, unless he does so orally at hearing. *See* 35 Ill. Adm. Code 108.208. If Manker withdraws his amended petition after the hearing starts, the Board will require Manker 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 Manker violated Sections 21(p)(1), 21(p)(3) and 21(p)(7) of the Act, 415 ILCS 5/21(p)(1), (p)(3), (p)(7) (2010), the Board will impose civil penalties on Manker. The civil penalty for violating any provision of Section 21(p), 22.51, 22.51a, or 55(k) is \$1,500.00 for each violation, except that the penalty amount is \$3,000.00 for each violation that is the person's second or subsequent adjudicated violation of that provision. *See* 415 ILCS 5/42(b)(4-5) (2010); 35 Ill. Adm. Code 108.500(a). However, if the Board finds that Manker "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 October 4, 2012 by a vote of 4-0.



John T. Therriault, Assistant Clerk
Illinois Pollution Control Board