

ILLINOIS POLLUTION CONTROL BOARD
September 5, 2013

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	
)	
v.)	AC 14-6
)	(IEPA No. 157-13-AC)
JONATHON A. BANKS d/b/a AMB AUTO)	(Administrative Citation)
REPAIR & DETAILING AND JOHN T. &)	
EMILY D. HOWARD,)	
)	
Respondents.)	

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

On July 8, 2013, the Illinois Environmental Protection Agency (Agency) timely filed an administrative citation against Jonathon A. Banks d/b/a AMB Auto Repair & Detailing and John T. & Emily D. Howard (collectively, respondents). *See* 415 ILCS 5/31.1(c) (2012); 35 Ill. Adm. Code 101.300(b), 108.202(c). The administrative citation concerns respondents' facility located at 1924 15th Street, Lawrenceville, Lawrence County. The property is commonly known to the Agency as the "AMB Auto Repair & Detailing" site and is designated with Site Code No. 1010155059. For the reasons below, the Board accepts respondent Jonathon A. Banks' petition to contest the administrative citation. The Board, however, withholds a final order concerning John T. & Emily D. Howard until the Board reaches a final determination regarding Mr. Banks.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2012)), 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) (2012); 35 Ill. Adm. Code 108.

In this case, the Agency alleges that on May 30, 2013, respondents violated Section 55(k)(1) and 55(k)(3) of the Act (415 ILCS 5/55(k)(1), (k)(3) (2012)) by causing or allowing water to accumulate in used waste tires, and by failing to file a return required under Section 55.10 of the Act, which is a violation of Section 55(k)(3) of the Act (415 ILCS 5/55(k)(3), 55.10 (2012)) at the Lawrenceville site. The Agency asks the Board to impose on respondents the statutory \$1,500 civil penalty for each alleged violation, for a total civil penalty of \$3,000.

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) (2012); *see also* 35 Ill. Adm. Code 101.300(c), 108.202(b). Any petition to contest the administrative citation was due by August 12, 2013. On August 9, 2013, respondent Jonathon A. Banks timely filed a petition. *See*

415 ILCS 5/31.1(d) (2012); 35 Ill. Adm. Code 101.300(b), 108.204(b). Mr. Banks alleges that the violations were due to “uncontrollable circumstances”. See 35 Ill. Adm. Code 108.206.

The Board accepts Mr. Banks’ 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) (2012). By contesting the administrative citation, Mr. Banks may have to pay the hearing costs of the Board and the Agency. See 415 ILCS 5/42(b)(4-5) (2012); 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.

DEFAULT JUDGMENT AGAINST JOHN T. & EMILY D. HOWARD

As required, the Agency served the administrative citation on the respondents within “60 days after the date of the observed violation.” 415 ILCS 5/31.1(b) (2012); see also 35 Ill. Adm. Code 108.202(b). To contest an administrative citation, a respondent must file a petition with the Board no later than 35 days after being served with the administrative citation. On July 16, 2013, the Agency filed proof that it had timely served the administrative citation on John T. & Emily D. Howard on July 8, 2013. John T. & Emily D. Howards’ petition for review would have been due on or before August 12, 2013. John T. & Emily D. Howard filed no petition for review.

If a respondent fails to file a timely petition for review, the Board must find that the respondent committed the violations alleged and impose the corresponding statutory civil penalty. 415 ILCS 31.1(d)(1) (2012); 35 Ill. Adm. Code 108.204(b), 108.406. Here, John T. & Emily D. Howard failed to timely file a petition. Accordingly, the Board finds that John T. & Emily D. Howard violated Sections 55(k)(1) and 55(k)(3) of the Act (415 ILCS 5/55(k)(1), (k)(3) (2012)). However, the Board will withhold a final order concerning John T. & Emily D. Howard until the Board reaches a final determination regarding Mr. Banks. See Illinois Environmental Protection Agency v. Ray Logsdon Estate, Logsdon Sand and Gravel, and M.K. O’Hara Construction, Inc., AC 05-54, slip op. at 3 (Apr. 21, 2005).

HEARING AND FEES FOR JONATHON BANKS’ PETITION

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

The Agency has the burden of proof at hearing. See 415 ILCS 5/31.1(d)(2) (2012); 35 Ill. Adm. Code 108.400. If the Board finds that Mr. Banks violated Sections 55(k)(1) and 55(k)(3), the Board will impose civil penalties on Mr. Banks. The civil penalty for violating any provision of Section 55(k) 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)(4-5) (2012); 35 Ill. Adm. Code 108.500(a). However, if the Board finds that

Mr. Banks “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) (2012); *see also* 35 Ill. Adm. Code 108.500(b).

IT IS SO ORDERED.

I, John T. Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on September 5, 2013, by a vote of 4-0.

A handwritten signature in black ink that reads "John T. Therriault". The signature is written in a cursive style with a long horizontal stroke at the end.

John T. Therriault, Clerk
Illinois Pollution Control Board