

ILLINOIS POLLUTION CONTROL BOARD
September 5, 2013

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	
)	
v.)	AC 14-4
)	IEPA File No. 170-13-AC
MARK AND CHERYL ROGERS,)	(Administrative Citation)
)	
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 Mark & Cheryl Rogers (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 17310 N. State Highway 78, Canton, Fulton County. The property is commonly known to the Agency as the "Rogers, Mark & Cheryl" site and is designated with Site Code No. 0578175005. For the reasons below, the Board accepts the respondents' petition to contest the administrative citation, but directs the respondents to serve a copy of the petition on the Agency and file proof of that service with the Board.

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 June 7, 2013, respondents violated Sections 21(p)(1), 21(p)(3) and 21(p)(7) of the Act (415 ILCS 5/21(p)(1), (p)(3), and (p)(7) (2012)) by causing or allowing the open dumping of waste in a manner resulting in litter, open burning, and deposition of general construction or demolition debris, or clean construction or demolition debris. 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 \$4,500.

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. A petition must set forth recognized grounds for why a respondent believes

that the administrative citation was improperly issued. *See* 35 Ill. Adm. Code 108.206. Those grounds are provided in Section 108.206 of the Board's rules, and include:

- a) the respondent does not own the property,
- b) the respondent did not cause or allow the alleged violation,
- c) the citation was not timely filed or properly served, or
- d) the alleged violation was the result of uncontrollable circumstances. 35 Ill. Adm. Code 108.206. *See IEPA v. Bobby G. Myers and Donald D. Myers*, AC 07-30, slip op. at 11 (May 21, 2009).

Under the Act, if the Board finds that a 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) (2012); *see also* 35 Ill. Adm. Code 108.500(b). The statutory defense of "uncontrollable circumstances," however, is available only where the *violation itself* resulted from uncontrollable circumstances. *See County of Jackson v. Egon Kamarasy*, AC 04-63, AC 04-64 (consol.), slip op. at 19 (June 16, 2005) ("Even if weather delayed Kamarasy's cleanup, it did not *cause* the violation of Sections 21(p)(1) and (p)(7) of the Act.") (emphasis in original). Accordingly, if a respondent has caused or allowed open dumping, the respondent is not excused from liability under an administrative citation merely because the subsequent cleanup may be hindered by extreme weather. *See IEPA v. Marshall Pekarsky*, AC 01-37 (Feb. 7, 2002), *rev'd sub nom. IEPA v. IPCB and Marshall Pekarsky*, No. 2-02-0281 (2nd Dist. Mar. 18, 2003) (unpublished order under Illinois Supreme Court Rule 23).

On August 12, 2013, respondents timely filed a petition (Pet.). *See* 415 ILCS 5/31.1(d) (2012); 35 Ill. Adm. Code 101.300(b), 108.204(b). In the petition, respondents assert that, "[t]here has not been any open dumping by anyone on our property." Pet. at 1. In addition, the petition states, "pictures show that there has not been any further burning and there never has been dumping." *Id.* The Board finds that this language falls within the recognized grounds of defense. Respondents' petition, however, does not indicate service of the petition on the Agency as the complainant for this administrative citation.

The Board therefore accepts the petition as timely, but directs the respondents to serve a copy of the petition on the Agency and file proof of that service with the Board. *See* 35 Ill. Adm. Code 101.304. Service may be done through U.S. Mail or other mail delivery service, in person, by messenger, or as otherwise prescribed by Board rule. *See* 35 Ill. Adm. Code 101.304(c).

Because the Agency is a party to this case, a copy of the amended petition, and any future documents submitted to the Board, should be sent to the following:

Michelle M. Ryan, Assistant Counsel
Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
PO Box 19276
Springfield, Illinois 62794-9276

The Rogers must tell the Board, each time they submit a document to the Board, that they provided a copy of the document to the Agency and identify what delivery method they used to provide the document to the Agency. *See* 35 Ill. Adm. Code 101.304(c). An example of such service is the Proof of Service filed by the Agency in this case on July 15, 2013. The certificate of service may be sent to the Board by U.S. Mail.

If no proof of service is filed with the Board by October 7, 2013, which is the first business day following the 30th day after the date of this order, the respondents' petition will be dismissed and a default order will be entered against them, imposing the statutory \$4,500 civil penalty. *See* Ray Logsdon Estate, AC 05-54 (Apr. 21, 2005).

If proof of service is filed by October 7, 2013, the Board will proceed to hearing. By contesting the administrative citation, the Rogers 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.

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.



John T. Therriault, Clerk
Illinois Pollution Control Board