

ILLINOIS POLLUTION CONTROL BOARD
March 20, 2014

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	
)	
v.)	AC 14-20
)	(IEPA No. 231-13-AC)
FRANK ROOT,)	(Administrative Citation)
)	
Respondent.)	

ORDER OF THE BOARD (by D. Glosser):

On October 15, 2013, the Illinois Environmental Protection Agency (Agency) timely filed an administrative citation against Frank Root (respondent). *See* 415 ILCS 5/31.1(c) (2012); 35 Ill. Adm. Code 101.300(b), 108.202(c). The administrative citation concerns respondent's property located at 13354 Route 16 in Gillespie, Macoupin County. The property is commonly known to the Agency as the "Gillespie/Root Frank" site and is designated with Site Code No. 1178095008. For the reasons below, the Board accepts respondent's petition to contest the administrative citation.

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 August 21, 2013, respondent violated Section 55(k)(1) of the Act (415 ILCS 5/55(k)(1) (2012)) by causing or allowing water to accumulate in used/waste tires at the Macoupin County site. The Agency asks the Board to impose on respondent the statutory \$1,500 civil penalty.

As required, the Agency served the administrative citation on respondent 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 November 25, 2013.

On October 25, 2013, respondent timely filed a petition. On November 7, 2013, the Board accepted the petition but directed respondent to correct deficiencies in the petition. On November 27, 2013, respondent filed an amended petition stating the alleged violations were a result of uncontrollable circumstances. However, the respondent did not serve the Agency with the amended petition. On December 5, 2013, the Board accepted the amended petition but

directed respondent to serve the Agency with a copy of the amended petition and file proof of that service with the Board by January 6, 2014. *See* 35 Ill. Adm. Code 101.304.

On January 15, 2014, the Board received respondent's second amended petition for review, which was postmarked January 13, 2014. Respondent's filing simply added across the top of the amended petition the words "please let Board know you received thank you". Respondent's filing did not include any further proof that the filing had been served on the Agency.

On February 20, 2014, the Board accepted respondent's second amended petition, and again ordered respondent to correctly serve the Agency with his petition. The Board gave respondent until March 24, 2014, to correctly serve the Agency. The Board provided detailed instructions of the service process, as well as the correct address that respondent would need to send his petition. On March 14, 2014, respondent filed proof that the petition was mailed to the Agency and on March 17, 2014 the Agency received respondent's petition for review via USPS certified mail. *See* 415 ILCS 5/31.1(d) (2012); 35 Ill. Adm. Code 101.300(b), 108.204(b).

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) (2012). By contesting the administrative citation, the respondent 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.

The respondent may withdraw his petition to contest the administrative citation at any time before the Board enters its final decision. If respondent 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 respondent withdraws his petition after the hearing starts, the Board will require respondent 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) (2012); 35 Ill. Adm. Code 108.400. If the Board finds that respondent violated Section 55(k)(1), the Board will impose civil penalties on respondent. The civil penalty for violating any provision of Section 55(k) is \$1,500 for each violation. *See* 415 ILCS 5/42(b)(4-5) (2012); 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) (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 March 20, 2014, 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 flourish at the end.

S

John T. Therriault, Clerk
Illinois Pollution Control Board