

ILLINOIS POLLUTION CONTROL BOARD  
February 5, 2015

ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Complainant,	)	
	)	
v.	)	AC 15-17
	)	(IEPA No. 367-14-AC)
BERNARD AND CAROLYN CARR and	)	(Administrative Citation)
JEFFREY YERK,	)	
	)	
Respondent.	)	

ORDER OF THE BOARD (by D. Glosser):

On October 29, 2014, the Illinois Environmental Protection Agency (Agency) timely filed an administrative citation against Bernard and Carolyn Carr (Carr) and Jeffrey Yerk<sup>1</sup> (Yerk) (collectively, respondents). The administrative citation concerns the Carrs' property located at 3995 North Fisk Road, Astoria, Fulton County. The property is commonly known to the Agency as the "Carr, Bernard & Carolyn" site and is designated with Site Code No. 0570055015. On December 18, 2014, the Board accepted respondent Jeffrey Yerk's petition to contest the administrative citation, but directed respondent to file an amended petition to cure deficiencies identified in the order. On January 23, 2015, respondents timely filed an amended petition for review. For the reasons below, the Board accepts respondents' petition to contest the administrative citation.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2014)), 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) (2014); 35 Ill. Adm. Code 108.

In this case, the Agency alleges that on October 1, 2014, 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) (2014)) by causing or allowing open dumping in a manner resulting in litter, open burning, and deposition of general construction or demolition debris, or clean construction or demolition debris and accumulation of water in used or waste tires at the Fulton County 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 \$4,500.

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<sup>1</sup> The Board notes that in the administrative citation Mr. Yerk is referred to as Jeffery Yerky; however, in his petition he corrects the spelling to "Yerk". The caption reflects that spelling.

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) (2014); *see also* 35 Ill. Adm. Code 101.300(c), 108.202(b). Any petition to contest the administrative citation was due by December 1, 2014. On December 2, 2014, Jeffrey Yerk filed with the Board a letter dated November 26, 2014. On December 18, 2014, the Board construed the filing as a timely filed petition (Pet.); however, the petition contained several deficiencies. On January 23, 2014 respondents timely filed an amended petition addressing the deficiencies.

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) (2014). 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) (2014); 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](http://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 respondents withdraw 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) (2014); 35 Ill. Adm. Code 108.400. If the Board finds that 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) (2014)), the Board will impose civil penalties on respondents. The civil penalty for violating any provision of Section 21(p), 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) (2014); 35 Ill. Adm. Code 108.500(a). However, if the Board finds that respondents “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) (2014); *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 February 5, 2014, by a vote of 4-0.



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John T. Therriault, Clerk  
Illinois Pollution Control Board