

ILLINOIS POLLUTION CONTROL BOARD
May 10, 2018

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	
)	
v.)	AC 18-10
)	(IEPA No. 32-18-AC)
DG PARTNERS, LLC, an Illinois limited)	(Administrative Citation)
liability company; CISSELL-MUELLER)	
CONSTRUCTION, INC, a Missouri)	
corporation; and CLIFFORD M.)	
KOLTZENBURG and CHRIS S.)	
KOLTZENBURG, individually, d/b/a)	
K&N EXCAVATING)	
)	
Respondents.)	

ORDER OF THE BOARD (by B.K. Carter):

On March 19, 2018, the Illinois Environmental Protection Agency (Agency) filed an administrative citation against the following respondents: DG Partners, LLC; Cissell-Mueller Construction, Inc; and Clifford M. Koltzenburg and Chris S. Koltzenburg, individually, doing business as “K&N Excavating” (collectively, the Koltzenburgs). *See* 415 ILCS 5/31.1 (2016); 35 Ill. Adm. Code 108. The administrative citation concerns a property located southwest of the intersection of North County Road 1700 and East County Road 650 in Carthage, Hancock County. The property is commonly known to the Agency as the “Clifford/Christopher Koltzenburg” site and is designated with Site Code No. 0678020001. In this order, the Board rules on both a motion to dismiss and a petition for review. First, the Board grants the Agency’s motion to dismiss Cissell-Mueller Construction and the Koltzenburgs. Second, the Board accepts DG Partners’ petition for review of the administrative citation. The Board provides background before turning to the motion and the petition.

BACKGROUND

Under the Environmental Protection Act (Act) (415 ILCS 5 (2016)), 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) (2016); 35 Ill. Adm. Code 108.

In this case, the Agency alleged that on January 25, 2018, respondents violated Sections 21(p)(1), (p)(3), (p)(7), and 55(k)(1) of the Act (415 ILCS 5/21(p)(1), (p)(3), (p)(7), 55(k)(1)

(2016)) by (1) causing or allowing the open dumping of waste in a manner that resulted in litter, open burning, and the deposition of general construction or demolition debris and (2) causing or allowing water to accumulate in used or waste tires at the Hancock County site. The Agency asked the Board to impose on respondents the statutory \$1,500 civil penalty for each alleged violation, for a total civil penalty of \$6,000, jointly and severally.

AGENCY'S MOTION TO DISMISS THREE OF FOUR RESPONDENTS

On April 12, 2018, the Agency filed a motion to dismiss the administrative citation as to Cissell-Mueller Construction and the Koltzenburgs. In its motion, the Agency states that it failed to serve the citation on these respondents within "60 days after the date of the observed violation." 415 ILCS 5/31.1(b) (2016); *see also* 35 Ill. Adm. Code 108.200(b). The Board therefore grants the Agency's motion and dismisses the administration citation as to Cissell-Mueller Construction and the Koltzenburgs. *See* 35 Ill. Adm. Code 108.402.

DG PARTNERS' PETITION FOR REVIEW

On March 21, 2018, the Agency timely served the administrative citation on DG Partners within "60 days after the date of the observed violation." 415 ILCS 5/31.1(b) (2016); *see also* 35 Ill. Adm. Code 101.300(c), 108.200(b). Any petition to contest the administrative citation was due by April 25, 2018. On April 25, 2018, DG Partners timely filed a petition. *See* 415 ILCS 5/31.1(d) (2016); 35 Ill. Adm. Code 101.300(b), 108.204(b). DG Partners alleges that it did not cause or allow the alleged violations and that any alleged violations were the result of uncontrollable circumstances. *See* 35 Ill. Adm. Code 108.206. The petition for review was filed for both DG Partners and Cissell-Mueller Construction, but Cissell-Mueller Construction is no longer a party based upon this order's grant of the Agency's dismissal motion.

The Board accepts DG Partners' 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) (2016). Upon its own motion or the motion of any party, the Board or the hearing officer may order that the hearing be held by videoconference. In deciding whether to hold the hearing by videoconference, factors that the Board or the hearing officer will consider include cost-effectiveness, efficiency, facility accommodations, witness availability, public interest, the parties' preferences, and the proceeding's complexity and contentiousness. *See* 35 Ill. Adm. Code 101.600(b), 108.300(d).

By contesting the administrative citation, DG Partners may have to pay the hearing costs of the Board and the Agency. *See* 415 ILCS 5/42(b)(4-5) (2016); 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 website at pcb.illinois.gov. *See* 35 Ill. Adm. Code 108.504. DG Partners may withdraw its petition to contest the administrative citation at any time before the Board enters its final decision. If DG Partners chooses to withdraw its petition, it must do so in writing, unless it does so orally at hearing. *See* 35 Ill. Adm. Code 108.208. If DG Partners withdraws its petition after the hearing starts, the Board will require it 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) (2016); 35 Ill. Adm. Code 108.400. If the Board finds that DG Partners violated Sections 21(p)(1), (p)(3), (p)(7), and 55(k)(1), the Board will impose civil penalties on DG Partners. The civil penalty for violating any provision of Section 21(p) or 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) (2016); 35 Ill. Adm. Code 108.500(a). However, if the Board finds that DG Partners "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) (2016); *see also* 35 Ill. Adm. Code 108.500(b).¹

IT IS SO ORDERED.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on May 10, 2018, by a vote of 5-0.

A handwritten signature in cursive script that reads "Don A. Brown". The signature is written in black ink on a white background.

Don A. Brown, Clerk
Illinois Pollution Control Board

¹ The caption of future filings in this proceeding must reflect DG Partners as the only respondent.