

ILLINOIS POLLUTION CONTROL BOARD
April 16, 2015

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	
)	
v.)	AC 15-33
)	(IEPA No. 73-15-AC)
GERALD CAIN AND EDDIE JONES,)	(Administrative Citation)
)	
Respondent.)	

ORDER OF THE BOARD (by D. Glosser):

On March 17, 2015, the Illinois Environmental Protection Agency (Agency) timely filed an administrative citation against Gerald Cain and Eddie Jones (respondents). *See* 415 ILCS 5/31.1(c) (2012); 35 Ill. Adm. Code 101.300(b), 108.202(c). The administrative citation concerns Mr. Cain’s 89.92 acre facility located in Union County. The property is commonly known to the Agency as the “Ware/Cain-Jones” site and is designated with Site Code No. 1818645005. For the reasons below, the Board accepts Mr. Cain’s petition to contest the administrative citation, but reserves any ruling on Mr. Jones, as the time for his appeal has not expired.

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 January 30, 2015, respondents violated Sections 21(p)(1), 21(p)(3), and 21(p)(7) of the Act (415 ILCS 5/21(p)(1), 21(p)(3), and 21(p)(7) (2012)) by causing or allowing the open dumping of waste in a manner resulting in: 1) litter, 2) burning, and 3) deposition of general construction or demolition debris, or clean construction or demolition debris at the Union 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.

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 to be filed by Mr. Cain on April 20, 2015, and any petition to contest the administrative citation was due to be filed by Mr. Jones on April 28, 2015. On April 13, 2015, Mr. Cain timely filed a petition. *See* 415 ILCS 5/31.1(d) (2012); 35 Ill. Adm. Code 101.300(b), 108.204(b). Mr. Cain

alleges that he does not own the personal property that is the subject of the alleged violations; he did not cause the alleged pollution to the real property; the alleged violations are a result of uncontrollable situations and circumstances that he cannot impact; the property is in a very remote location that he could have no casual observation to allow any attempt to influence the owner; and he has suffered a stroke and cannot speak, write, drive or otherwise have any control over Eddie Jones. *See* 35 Ill. Adm. Code 108.206.

The Board accepts Mr. Cain's petition and directs the hearing officer to proceed expeditiously to hearing. The Board reserves any ruling regarding Mr. Jones as the time for him to file an appeal has not yet expired. 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. Cain 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.

Mr. Cain may withdraw his petition to contest the administrative citation at any time before the Board enters its final decision. If Mr. Cain 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. Cain withdraws his petition after the hearing starts, the Board will require Mr. Cain 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 respondents violated Sections 21(p)(1), 21(p)(3) and 21(p)(7), 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. *See* 415 ILCS 5/42(b)(4-5) (2012); 35 Ill. Adm. Code 108.500(a). However, if the Board finds that respondents "have 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 April 16, 2015, by a vote of 5-0.



John T. Therriault, Clerk
Illinois Pollution Control Board