

ILLINOIS POLLUTION CONTROL BOARD
August 8, 2013

COUNTY OF PERRY,)
)
Complainant,)
)
v.) AC 13-55
) (Administrative Citation)
UNION PACIFIC RAILROAD COMPANY,)
)
Respondent.)

ORDER OF THE BOARD (by D.Glosser):

On June 6, 2013, the County of Perry (County) timely filed an administrative citation against Union Pacific Railroad Company (respondent). *See* 415 ILCS 5/31.1(c) (2010); 35 Ill. Adm. Code 101.300(b), 108.202(c). The administrative citation concerns respondent’s facility located at the intersection of Union Pacific Railroad tracks and Fairground Road, near Highway 154 in Pinckneyville, Perry County. The property is commonly known to the Agency as the “Pinckneyville/Union Pacific Railroad.” site and is designated with Site Code No. 1450155056. For the reasons below, the Board accepts respondent’s petition to contest the administrative citation.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2010)), 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) (2010); 35 Ill. Adm. Code 108.

In this case, the County alleges that on May 15, 2013, respondent violated Section 21(p)(1) of the Act (415 ILCS 5/21(p)(1) (2010)) by causing or allowing the open dumping of waste in a manner resulting in litter at the Perry County site. The County asks the Board to impose on respondent the statutory \$1,500 civil penalty for each alleged violation, for a total civil penalty of \$1,500.

As required, the County served the administrative citation on respondent within “60 days after the date of the observed violation.” 415 ILCS 5/31.1(b) (2010); *see also* 35 Ill. Adm. Code 101.300(c), 108.202(b). Any petition to contest the administrative citation was due by July 30, 2013. On July 30, 2013, respondent timely filed a petition. *See* 415 ILCS 5/31.1(d) (2010); 35 Ill. Adm. Code 101.300(b), 108.204(b). Respondent asserts that the materials are used in Union Pacific’s regular course of maintaining and operating its railway system and therefore do not constitute “waste” or “litter”. Respondent also asserts that the violation was the result of uncontrollable circumstances. Respondent further asserts “the statute is void as-applied to Union Pacific under the federal preemption doctrine”. Pet. at 2; *See* 35 Ill. Adm. Code 108.206.

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) (2010). By contesting the administrative citation, respondent may have to pay the hearing costs of the Board and the County. *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.

Respondent may withdraw its petition to contest the administrative citation at any time before the Board enters its final decision. If respondent chooses to withdraw its petition, respondent must do so in writing, unless it does so orally at hearing. *See* 35 Ill. Adm. Code 108.208. If respondent withdraws its petition after the hearing starts, the Board will require respondent to pay the hearing costs of the Board and the County. *See id.* at 108.500(c).

The County has the burden of proof at hearing. *See* 415 ILCS 5/31.1(d)(2) (2010); 35 Ill. Adm. Code 108.400. If the Board finds that respondent violated Section 21(p)(1) or (p)(3) of the Act, the Board will impose civil penalties on respondent. 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) (2010); 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) (2010); *see also* 35 Ill. Adm. Code 108.500(b).

IT IS SO ORDERED.

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on August 8, 2013, by a vote of 4-0.



John T. Therriault, Clerk
Illinois Pollution Control Board