

ILLINOIS POLLUTION CONTROL BOARD

September 5, 2013

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	
)	
v.)	AC 13-60
)	(IEPA No. 126-13-AC)
JAMES HARRIS,)	(Administrative Citation)
)	
Respondent.)	

ORDER OF THE BOARD (by C.K. Zalewski):

On June 28, 2013, the Illinois Environmental Protection Agency (Agency) timely filed an administrative citation against James Harris (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 the end of Market Street at Haw Creek in Knoxville, Knox County. The property is commonly known to the Agency as the "Harris Property" site and is designated with Site Code No. 0958120001. The Board received a petition for review from respondent on August 5, 2013. 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 May 7, 2013, respondent violated Sections 21(p)(1), 21(p)(3), 21(p)(4) and 21(p)(7) of the Act (415 ILCS 5/21(p)(1), 21(p)(3), 21(p)(4) and 21(p)(7) (2012)) by causing or allowing the open dumping of waste in a manner resulting in litter, open burning, deposition of waste in standing or flowing waters and deposition of general construction or demolition debris or clean construction or demolition debris at the site. As this is the second alleged violation by respondent, the Agency asks the Board to impose on respondent the statutory \$3,000 civil penalty for each alleged violation, for a total civil penalty of \$12,000.

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 August 2, 2013. A petition must set forth recognized grounds for why a respondent believes that the

administrative citation was improperly issued. *See* 35 Ill. Adm. Code 108.206. Those grounds are provided in Section 108.206 of the Board's rules, and include:

- a) the respondent does not own the property,
- b) the respondent did not cause or allow the alleged violation,
- c) the citation was not timely filed or properly served, or
- d) the alleged violation was the result of uncontrollable circumstances. 35 Ill. Adm. Code 108.206. *See IEPA v. Bobby G. Myers and Donald D. Myers*, AC 07-30, slip op. at 11 (May 21, 2009).

Under the Act, if the Board finds that a 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). The statutory defense of "uncontrollable circumstances," however, is available only where the *violation itself* resulted from uncontrollable circumstances. *See County of Jackson v. Egon Kamarasy*, AC 04-63, AC 04-64 (consol.), slip op. at 19 (June 16, 2005) ("Even if weather delayed Kamarasy's cleanup, it did not *cause* the violation of Sections 21(p)(1) and (p)(7) of the Act.") (emphasis in original). Accordingly, if a respondent has caused or allowed open dumping, the respondent is not excused from liability under an administrative citation merely because the subsequent cleanup may be hindered by extreme weather. *See IEPA v. Marshall Pekarsky*, AC 01-37 (Feb. 7, 2002), *rev'd sub nom. IEPA v. IPCB and Marshall Pekarsky*, No. 2-02-0281 (2nd Dist. Mar. 18, 2003) (unpublished order under Illinois Supreme Court Rule 23).

On August 5, 2013, the Board was in receipt of the timely petition, bearing the postmark of August 2, 2013. *See* 415 ILCS 5/31.1(d) (2012); 35 Ill. Adm. Code 101.300(b), 108.204(b). In the petition, respondent alleges that he has requested or will request a variance from the requirements of the law. In the alternative, respondent alleges that the citation is unwarranted and contrary to law, and that the supporting evidence was obtained in violation of respondent's right to due process. *See* 35 Ill. Adm. Code 108.206.

The Board accepts Mr. Harris' 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, Mr. Harris 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. Harris may withdraw his petition to contest the administrative citation at any time before the Board enters its final decision. If Mr. Harris 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.

Harris withdraws his petition after the hearing starts, the Board will require Mr. Harris to pay the hearing costs of the Board and the Agency. *See* 35 Ill. Adm. Code 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 Mr. Harris violated 21(p)(1), 21(p)(3), 21(p)(4) and 21(p)(7) of the Act, the Board will impose civil penalties on Mr. Harris. 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) (2012); 35 Ill. Adm. Code 108.500(a). However, if the Board finds that Mr. Harris "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 September 5, 2013, by a vote of 4-0.

A handwritten signature in black ink, reading "John T. Therriault". The signature is fluid and cursive, with a long horizontal stroke at the end.

John T. Therriault, Clerk
Illinois Pollution Control Board