

ILLINOIS POLLUTION CONTROL BOARD  
February 15, 2007

ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
 )  
Complainant, )  
 )  
v. ) AC 07-30  
 ) (IEPA No. 375-06-AC)  
BOBBY G. MYERS and DONAL D. MYERS, ) (Administrative Citation)  
 )  
Respondents. )

ORDER OF THE BOARD (by G.T. Girard):

On January 5, 2007, the Illinois Environmental Protection Agency (Agency) timely filed an administrative citation against Bobby G. Myers and Donald D. Myers (respondents). *See* 415 ILCS 5/31.1(c) (2004); 35 Ill. Adm. Code 108.202(c). The administrative citation concerns a facility located at 3050 Mt. Glen Road in rural Cobden, Union County. For the reasons below, the Board accepts respondents' petition to contest the administrative citation.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2004)), 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 at sanitary landfills or unpermitted open dumps. *See* 415 ILCS 5/3.305, 3.445, 21(o), (p), 31.1(c), 42(b)(4), (4-5) (2002); 35 Ill. Adm. Code 108.

In this case, the Agency alleges that respondents violated Sections 21(p)(1) and (p)(3) of the Act (415 ILCS 5/21(p)(1), (3) (2004)) by causing or allowing the open dumping of waste in a manner resulting in litter and open burning. The site is commonly known to the Agency as "Cobden/Myers, Bobby G." and is designated with Agency Site Code No. 1818515003. The Agency asks the Board to impose on respondents the statutory civil penalty of \$1,500 for each alleged violation, for a total civil penalty of \$3,000.

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) (2004); *see also* 35 Ill. Adm. Code 108.202(b). Respondents timely filed a petition for review on February 8, 2007. *See* 415 ILCS 5/31.1(d) (2004); 35 Ill. Adm. Code 108.204(b). Respondents assert that Bobby G. Myers does not own the site and has never operated an open dump or salvage yard on the site. According to the petition, the site is owned solely by Donald D. Myers, who has operated the site as a salvage yard, not as an open dump as the Agency alleges. Further, respondents maintain that they have never allowed or caused the open dumping of waste resulting in open burning. The petition also states that this administrative citation constitutes "selective enforcement" because the property, though "unsightly," is "in no worse condition nor any more violative . . . than are

dozens of other parcels of property located throughout Union County.” Petition at 2; *see* 35 Ill. Adm. Code 108.206.

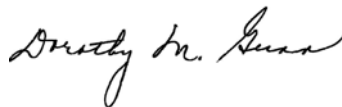
The Board accepts the petition and directs the hearing officer to proceed expeditiously to hearing. The hearing officer will give the parties at least 21 days written notice of the hearing. *See* 35 Ill. Adm. Code 108.300; *see also* 415 ILCS 5/31.1(d)(2) (2004). By contesting the administrative citation, respondents may have to pay the hearing costs of the Board and the Agency. *See* 415 ILCS 5/42(b)(4-5) (2004); 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 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) (2004); 35 Ill. Adm. Code 108.400. If the Board finds that respondents violated Section 21(p)(1) or (p)(3), 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 imposed is \$3,000 for a second or subsequent adjudicated violation of that provision. *See* 415 ILCS 5/42(b)(4-5) (2004); 35 Ill. Adm. Code 108.500. 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) (2004); *see also* 35 Ill. Adm. Code 108.500(b).

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on February 15, 2007, by a vote of 4-0.



Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board