

ILLINOIS POLLUTION CONTROL BOARD
September 20, 2007

COUNTY OF MACON, ILLINOIS,)
)
Complainant,)
)
v.) AC 08-5
) (MCSWMD No. 2007-002-AC)
ANNETTE TOPPS and RICHARD JONES,) (Administrative Citation)
)
Respondents.)

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

On August 13, 2007, complainant, the County of Macon (Macon), timely filed an administrative citation against respondents, Annette Topps (Topps) and Richard Jones (Jones). *See* 415 ILCS 5/31.1(c) (2006); 35 Ill. Adm. Code 101.300(b), 108.202(c). The administrative citation concerns property allegedly owned and operated by respondents, located on Bender Road in Oakley Township, Macon County, and designated with Illinois Environmental Protection Agency (Agency) Site Code No. 1158125008. For the reasons below, the Board accepts Jones' petition to contest the administrative citation, but reserves entering a default order against Topps.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2006)), 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) (2006); 35 Ill. Adm. Code 108.

In this case, Macon alleges that Topps and Jones violated Sections 21(p)(1), (p)(3), and (p)(7) of the Act (415 ILCS 5/21(p)(1), (p)(3), (p)(7) (2006)) by causing or allowing the open dumping of waste in a manner resulting in (1) litter, (2) open burning, and (3) the deposition of general or clean construction or demolition debris. Macon asks the Board to impose a \$4,500 civil penalty on respondents.

As required, Macon served the administrative citation on Topps and Jones within "60 days after the date of the observed violation." 415 ILCS 5/31.1(b) (2006); *see also* 35 Ill. Adm. Code 101.300(c), 108.202(b). To contest an administrative citation, a respondent must file a petition with the Board no later than 35 days after being served with the administrative citation. If the respondent fails to do so, the Board must find that the respondent committed the violations alleged and impose the corresponding civil penalty. *See* 415 ILCS 31.1(d)(1) (2006); 35 Ill. Adm. Code 101.300(b), 108.204(b), 108.406. Topps was served with the administrative citation on August 11, 2007, making any petition from Topps to contest the citation due by September 17, 2007. *See* 35 Ill. Adm. Code 101.300(a). Because the Board may yet receive a timely-filed

petition from Topps under the Board's "mailbox rule" (35 Ill. Adm. 101.300(b)(2)), the Board today reserves entering a default order against Topps.

Jones was served with the administrative citation on August 14, 2007, and timely filed a petition to contest the citation on September 6, 2007. *See* 415 ILCS 5/31.1(d) (2006); 35 Ill. Adm. Code 108.204(b). According to Jones, he did not know that his name was on the real estate title for the site and he did not participate in, consent to, or know of the activities alleged in the citation. Further, Jones alleges that he "has no business relationship with any party conducting illegal or harmful activities on the premises set forth in the citation." Petition at 1; *see* 35 Ill. Adm. Code 108.206.

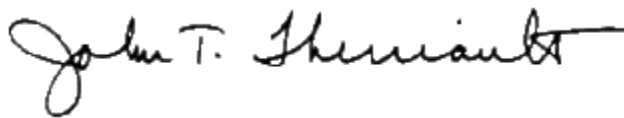
The Board accepts Jones' petition and directs the hearing officer to proceed expeditiously to hearing. The hearing officer will give the parties at least 21 days written notice of the hearing. *See* 35 Ill. Adm. Code 108.300; 415 ILCS 5/31.1(d)(2) (2006). By contesting the administrative citation, Jones may have to pay the hearing costs of the Board and Macon. *See* 415 ILCS 5/42(b)(4-5) (2006); 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.

Jones may withdraw his petition to contest the administrative citation at any time before the Board enters its final decision. If Jones 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 Jones withdraws his petition after the hearing starts, the Board will require Jones to pay the hearing costs of the Board and Macon. *See id.* at 108.500(c).

Macon has the burden of proof at hearing. *See* 415 ILCS 5/31.1(d)(2) (2006); 35 Ill. Adm. Code 108.400. If the Board finds that Jones violated Sections 21(p)(1), (p)(3), and (p)(7) of the Act, the Board will impose civil penalties on Jones. The civil penalty for violating any provision of subsection (p) of Section 21 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) (2006); 35 Ill. Adm. Code 108.500(a). However, if the Board finds that Jones "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) (2006); *see also* 35 Ill. Adm. Code 108.500(b).

IT IS SO ORDERED.

I, John Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on September 20, 2007, by a vote of 4-0.



John Therriault, Assistant Clerk
Illinois Pollution Control Board