

ILLINOIS POLLUTION CONTROL BOARD
March 20, 2008

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
v.) AC 08-16
) (IEPA No. 4-08-AC)
GENE BREEDEN,) (Administrative Citation)
)
Respondent.)

ORDER OF THE BOARD (by A.S. Moore):

On February 1, 2008, the Illinois Environmental Protection Agency (Complainant), filed an Administrative Citation against Gene Breeden (Respondent). *See* 415 ILCS 5/31.1(c) (2006); 35 Ill. Adm. Code 101.300(b), 108.202(c). The administrative citation concerns Respondent’s property known as G & D Salvage located at 104 W. Lincoln Street in Loda, Iroquois County. For the reasons below, the Board accepts Respondent’s petition to contest the administrative citation.

Under the Environmental Protection Act (Act) (415 ILCS 5/1 *et seq.* (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 Illinois Environmental Protection 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), 42(b)(4-5) (2006); 35 Ill. Adm. Code 108.

In this case, Complainant alleges that Respondent violated Sections 21(p)(1), 21(p)(3), and 21(p)(7) of the Act (415 ILCS 5/21(p)(1), (p)(3), and (p)(7) (2006)) by causing or allowing the open dumping of waste in a manner resulting in: (1) litter; (2) open burning; and (3) deposition of general construction or demolition debris or deposition of clean construction or demolition debris at Respondent’s Iroquois County site. Because the citation alleges a second or subsequent violation of Section 21(p)(1) and 21(p)(3) (415 ILCS 5/21(p)(1), (p)(3)), Complainant asks the Board to impose a total civil penalty of \$7,500.00 on Respondent.

As required, Complainant served the administrative citation on Respondent 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). Any petition to contest the administrative citation was due by March 7, 2008. On March 5, 2008, Respondent timely filed a petition to contest the administrative citation. *See* 415 ILCS 5/31.1(d) (2006); 35 Ill. Adm. Code 101.300(b), 108.204(b). Respondent “denies having committed the alleged violations” and “affirmatively

alleges that the alleged open burning resulted from uncontrollable circumstances, namely arson.” Petition at 1; *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* 415 ILCS 5/31.1(d)(2) (2006); 35 Ill. Adm. Code 108.300. By contesting the administrative citation, Respondent may have to pay the hearing costs of the Board and Complainant. *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.

Respondent may withdraw his petition to contest the administrative citation at any time before the Board enters its final decision. If Respondent 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 Respondent withdraws his petition after the hearing starts, the Board will require Respondent to pay the hearing costs of the Board and Complainant. *See* 35 Ill. Adm. Code 108.500(c).

Complainant 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 Respondent violated 415 ILCS 5/21(p)(1), (p)(3), or (p)(7), the Board will impose civil penalties on Respondent. 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 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) (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 March 20, 2008, by a vote of 4-0.



John Therriault, Assistant Clerk
Illinois Pollution Control Board