

ILLINOIS POLLUTION CONTROL BOARD
June 17, 2010

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
v.) AC 10-25
) (IEPA No. 152-10-AC)
KENNETH VERBOUT,) (Administrative Citation)
)
Respondent.)
)

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

On May 10, 2010, Illinois Environmental Protection Agency (Agency) timely filed an administrative citation against Kenneth Verbout. *See* 415 ILCS 5/31.1(c) (2008)¹; 35 Ill. Adm. Code 101.300(b), 108.202(c). The administrative citation concerns Mr. Verbout's property located at 220 West North Railroad Street in Sheffield, Bureau County. The property is commonly known to the Agency as the "Sheffield/Kenneth Verbout" site and is designated with Site Code No. 0110955019. For the reasons below, the Board accepts Mr. Verbout's petition to contest the administrative citation.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2008)), 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), 55(k), 31.1, 42(b)(4), (4-5) (2008); 35 Ill. Adm. Code 108.

In this case, the Agency alleges that on April 6, 2010, Mr. Verbout violated Sections 21(p)(1), (p)(3), (p)(7), and 55(k)(1) of the Act (415 ILCS 5/21(p)(1), (p)(3), (p)(7), 55(k)(1) (2008)) at his Bureau County site by causing or allowing the open dumping of waste in a manner resulting in litter, open burning, the deposition of general or clean construction or demolition debris, and the presence of used tires not altered, covered, or otherwise prevented from accumulating water. The Agency asks the Board to impose the statutory \$1,500 civil penalty on Mr. Verbout for each of the four violations for a total penalty of \$6,000.

¹ The Board cites the Environmental Protection Act (415 ILCS 5) in the 2008 compiled statutes. However, Public Act 96-0737, effective August 25, 2009, amended Sections 31.1, 42, 55, and 55.1 of the statute and is not reflected in the 2008 compiled statutes. Among other things, the amendments create the prohibitions set forth in new Section 55(k) and permit alleged violations of Section 55(k) to be prosecuted by administrative citation.

As required, the Agency served the administrative citation on Mr. Verbout within “60 days after the date of the observed violation.” 415 ILCS 5/31.1(b) (2008); *see also* 35 Ill. Adm. Code 101.300(c), 108.202(b). Any petition to contest the administrative citation was due by June 11, 2010. On June 9, 2010, Mr. Verbout timely filed a petition. *See* 415 ILCS 5/31.1(d) (2008); 35 Ill. Adm. Code 101.300(b), 108.204(b). Mr. Verbout alleges that the violations resulted from uncontrollable circumstances. *See* 35 Ill. Adm. Code 108.206. The petition also alleges as follows:

We have since receiving said citation, removed debris in question by way of trash receptacle provided by our village fathers. Removed all wood debris and hauled the tires to a recycle center in Manlius, IL. The steel was hauled to Cernovich Iron in Kewanee, IL. Petition at 1.

The Board notes, however, that in an administrative citation proceeding, voluntary clean up acts performed by a respondent after a site inspection are generally neither a defense to the alleged violation nor relevant in determining the civil penalty amount. *See, e.g., IEPA v. Jack Wright*, AC 89-227, slip op. at 7 (Aug. 30, 1990).

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) (2008). By contesting the administrative citation, Mr. Verbout may have to pay the hearing costs of the Board and the Agency. *See* 415 ILCS 5/42(b)(4-5) (2008); 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. Verbout may withdraw his petition to contest the administrative citation at any time before the Board enters its final decision. If Mr. Verbout 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. Verbout withdraws his petition after the hearing starts, the Board will require Mr. Verbout 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) (2008); 35 Ill. Adm. Code 108.400. If the Board finds that Mr. Verbout violated Section 21(p)(1), (p)(3), (p)(7), or 55(k)(1), the Board will impose civil penalties on Mr. Verbout. The civil penalty for violating any provision of subsection (p) of Section 21 or subsection (k) of Section 55 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) (2008); 35 Ill. Adm. Code 108.500(a). However, if the Board finds that Mr. Verbout “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) (2008); *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 June 17, 2010, by a vote of 5-0.

A handwritten signature in black ink that reads "John T. Therriault". The signature is written in a cursive style with a long horizontal stroke at the end.

John Therriault, Assistant Clerk
Illinois Pollution Control Board