

ILLINOIS POLLUTION CONTROL BOARD
February 3, 2011

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
v.) AC 11-16
) (IEPA No. 322-10-AC)
PHILLIP NEWELL,) (Administrative Citation)
)
Respondent.)

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

On December 15, 2010, the Illinois Environmental Protection Agency (Agency) timely filed an administrative citation against Phillip Newell. The administrative citation was timely filed because it was postmarked on or before the filing deadline. *See* 415 ILCS 5/31.1(c) (2008); 35 Ill. Adm. Code 101.300(b)(2), 108.202(c). The administrative citation concerns Mr. Newell's facility located at 11038 Cedar Grove in rural Marion, Williamson County. The property is commonly known to the Agency as the "Marion/Newell. Phillip" site and is designated with Site Code No. 1998625012. For the reasons below, the Board accepts Mr. Newell'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. *See* 415 ILCS 5/21(o), 21(p), 22.51, 22.51a, 31.1(c), 42(b)(4), 42(b)(4-5), 55(k) (2008); 35 Ill. Adm. Code 108.

In this case, the Agency alleges that on October 28, 2010, Mr. Newell violated Sections 21(p)(1), (p)(3), and (p)(7) of the Act (415 ILCS 5/21(p)(1), (p)(3), (p)(7) (2008)) by causing or allowing the open dumping of waste in a manner resulting in litter, open burning, and the deposition of general or clean construction or demolition debris at the Williamson County site. The Agency asks the Board to impose on Mr. Newell the statutory civil penalty of \$1,500 for each alleged violation, for a total civil penalty of \$4,500.

As required, the Agency served the administrative citation on Mr. Newell 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 January 21, 2011. On January 19, 2011, Mr. Newell timely filed a petition. *See* 415 ILCS 5/31.1(d) (2008); 35 Ill. Adm. Code 101.300(b), 108.204(b). Mr. Newell contests the citation on the ground that the alleged violations resulted from uncontrollable circumstances. *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; 415 ILCS 5/31.1(d)(2) (2008). By contesting the administrative citation, Mr. Newell 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. Newell may withdraw his petition to contest the administrative citation at any time before the Board enters its final decision. If Mr. Newell 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. Newell withdraws his petition after the hearing starts, the Board will require him 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. Newell violated Section 21(p)(1), (p)(3), or (p)(7), the Board will impose civil penalties on Mr. Newell. 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) (2008); 35 Ill. Adm. Code 108.500(a). However, if the Board finds that Mr. Newell "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 February 3, 2011, by a vote of 5-0.



John Therriault, Assistant Clerk
Illinois Pollution Control Board