

ILLINOIS POLLUTION CONTROL BOARD
August 18, 2011

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
v.) AC 11-28
) (IEPA No. 125-11-AC)
THAD and LINDA SHAFER,) (Administrative Citation)
)
Respondents.)

ORDER OF THE BOARD (by C. K. Zalewski):

On June 7, 2011, the Illinois Environmental Protection Agency (Agency) timely filed an administrative citation against Thad and Linda Shafer (respondents). *See* 415 ILCS 5/31.1(c) (2010); 35 Ill. Adm. Code 101.300(b), 108.202(c). The administrative citation concerns respondents' open dump facility located at 984 US Route 40, Jewett, Cumberland County. The property is commonly known to the Agency as the "Jewett/Shafer" site and is designated with Site Code No. 0350105004. For the reasons below, the Board accepts Thad Shafer's amended petition to contest the administrative citation as timely filed.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2010)), 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) (2010); 35 Ill. Adm. Code 108.

In this case, the Agency alleges that on April 7, 2011, respondents violated Sections 21(p)(1) and 21(p)(7) of the Act (415 ILCS 5/21(p)(1) and 21(p)(7) (2010)) by: 1) causing or allowing the open dumping of waste in a manner resulting in litter and 2) causing or allowing the open dumping of waste in a manner resulting in deposition of general construction or demolition debris or clean construction or demolition debris at the Cumberland County site. The Agency asks the Board to impose on respondents the statutory \$1,500 civil penalty for each alleged violation, for a total civil penalty of \$3,000.

As required, the Agency served the administrative citation on Thad Shafer within "60 days after the date of the observed violation." 415 ILCS 5/31.1(b) (2010); *see also* 35 Ill. Adm. Code 101.300(c), 108.202(b). The record includes the "green card" receipt signed by Thad Shafer indicating receipt of certified mail addressed to "Thad and Linda Shaffer". Any petition to contest the administrative citation was due by July 12, 2011. On June 20, 2011, Thad Shafer timely filed a petition. However, on July 7, 2011, the Board directed Thad Shafer to file an amended petition to cure certain deficiencies identified in the Board's order.

On July 27, 2011, Thad Shafer timely filed an amended petition (Amend. Pet.). *See* 415 ILCS 5/31.1(d) (2010); 35 Ill. Adm. Code 101.300(b), 108.204(b). The amended petition states that Thad Shafer did not cause or allow any open dumping and that he omitted Linda Shafer from the original petition because he does not know a Linda Shafer. Amend. Pet. at 1. The amended petition also states that the 4th, 5th and 6th Amendments pertain to this situation. *Id.*

As to Linda Shafer, the Board notes that she did not file a petition for review on or before July 7, 2011. However, the record does not presently show proof of service on Linda Shafer, as the “green card” receipt of service by certified mail was signed by Thad Shafer only. Based on Thad Shafer’s amended petition, he is not qualified to accept service on her behalf. It is accordingly unclear from the record what connection Linda Shafer has to the site for which the administrative citation was issued and whether the Board has jurisdiction as to Linda Shafer. The Board accordingly directs the Agency, on or before September 8, 2011, to either file proof of service on Linda Shafer or any other appropriate filing under the circumstances.

As to Thad Shafer, the Board accepts his 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) (2010). 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) (2010); 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.

Thad Shafer 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 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) (2010); 35 Ill. Adm. Code 108.400. If the Board finds that respondent violated Sections 21(p)(1) and 21(p)(7) of the Act (415 ILCS 5/21(p)(1) and 21(p)(7) (2010)), the Board will impose civil penalties on respondent. The civil penalty for violating any provision of Section 21(p), 22.51, 22.51a, or 55(k) 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) (2010); 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) (2010); *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 August 18, 2011 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