

ILLINOIS POLLUTION CONTROL BOARD
January 5, 2012

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	
)	
v.)	AC 12-18
)	(IEPA No. 343-11-AC)
F.I.M., INC.,)	(Administrative Citation)
)	
Respondent.)	

ORDER OF THE BOARD (by T.A. Holbrook):

On November 23, 2011, the Illinois Environmental Protection Agency (Agency) timely filed an administrative citation against F.I.M., Inc. (respondent). *See* 415 ILCS 5/31.1(c) (2010); 35 Ill. Adm. Code 101.300(b), 108.202(c). The administrative citation concerns respondent’s facility located at North 30th Street, Quincy, Adams County. The property is commonly known to the Agency as the “Quincy/FIM, Inc.” site and is designated with Site Code No. 0010655313. 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.* (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 September 14, 2011, respondent violated Sections 21(p)(1), (p)(3), and (p)(7) of the Act (415 ILCS 5/21(p)(1), (p)(3), (p)(7) (2010)) 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. The Agency asks the Board to impose on respondent the statutory \$1,500.00 civil penalty for each alleged violation, for a total civil penalty of \$4,500.00

As required, the Agency served the administrative citation on respondent 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). Any petition to contest the administrative citation was due by December 27, 2011. On December 19, 2011, respondent timely filed a petition. *See* 415 ILCS 5/31.1(d) (2010); 35 Ill. Adm. Code 101.300(b), 108.204(b). Respondent alleges that he did not cause or allow the alleged violations to take place on the property. Respondent further states that he previously owned an adjoining tract, and when the aforementioned tract was sold, the agreement required the purchaser to dispose of certain waste identified in the citation. However, the

petition indicates that the purchaser has failed to complete the task as required by the contract. Respondent also alleges that there was no open burning on the site, and further notes that the Agency's open dump inspection checklist attached to the administrative citation does not indicate that there was open burning on the site. *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) (2010); 35 Ill. Adm. Code 108.300. By contesting the administrative citation, respondent 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.

Respondent may withdraw his petition to contest the administrative citation at any time before the Board enters its final decision. If respondent choose 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 withdraw his petition after the hearing starts, the Board will require him to pay the hearing costs of the Board and the Agency. *See* 35 Ill. Adm. Code 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 Section 21(p)(1), (p)(3), or (p)(7) of the Act, the Board will impose civil penalties on respondent. 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) (2010); 35 Ill. Adm. Code 108.500(a). However, if the Board finds 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 T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on January 5, 2012, by a vote of 5-0.



John T. Therriault, Assistant Clerk
Illinois Pollution Control Board