

ILLINOIS POLLUTION CONTROL BOARD
February 2, 2012

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	
)	
v.)	AC 12-20
)	(IEPA No. 386-11-AC)
SHELBY AND SONS, INC.,)	(Administrative Citation)
)	
Respondent.)	

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

On December 21, 2011, the Illinois Protection Agency (Agency) timely filed an administrative citation against Shelby and Sons, 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 auto parts recycling and rebuilding facility located one mile north of West Frankfort on the east and west sides of Route 37 in Franklin County. The property is commonly known to the Agency as the "West Frankfort/Shelby and Sons, Inc." site and is designated with Site Code No. 0550705030. For the reasons below, the Board accepts respondent's petition to contest the administrative citation.

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 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. *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 October 25, 2011, respondent violated Sections 21(p)(1), (4), (7), and 55(k) of the Act (415 ILCS 5/21(p)(1), (p)(4), (p)(7), and 55(k) (2010)) by causing or allowing the open dumping of waste resulting in litter, the deposition of waste in standing or flowing waters, the deposition of construction of demolition debris, and in used tires not prevented from accumulation of water. 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 \$6,000.00.

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 January 24, 2012. On January 24, 2012, 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 the cited violations were the result of uncontrollable circumstances due to heavy rains and flooding which scattered

items throughout the property, leading to the appearance of litter; that it has never operated as an open dump; and that it was not aware it was in violation of Agency regulations but has taken steps to correct the cited problems. *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 its petition to contest the administrative citation at any time before the Board enters its final decision. If respondent chooses to withdraw its petition, it must do so in writing, unless it does so orally at hearing. *See* 35 Ill. Adm. Code 108.208. If respondent withdraws its petition after the hearing starts, the Board will require respondent 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 Sections 21(p)(1), 21(p)(4), 21(p)(7), or 55(k), the Board will impose civil penalties on respondent. The civil penalty for violating any provision of Section 21(p) or 55(k) is \$1,500 for each violation. *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 T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on February 2, 2012 by a vote of 5-0.



John T. Therriault, Assistant Clerk
Illinois Pollution Control Board