

ILLINOIS POLLUTION CONTROL BOARD

August 9, 2012

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
) AC 12-58
v.) (IEPA No. 137-12-AC)
)
LEOTA HUMM and BISHOP's TRUCK)
SERVICE, INC.,)
)
Respondents.)

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

On June 18, 2012, the Illinois Environmental Protection Agency (Agency) timely filed an administrative citation against Leota Humm (Humm) and Bishop's Truck Service, Inc. (Bishop's). *See* 415 ILCS 5/31.1(c) (2010); 35 Ill. Adm. Code 101.300(b), 108.202(c). The administrative citation concerns Bishop's truck service facility, which had been owned by Humm, located at 333 E. Sloan Street, Harrisburg, Saline County. The property is commonly known to the Agency as the "Harrisburg/Bishop's Truck Service, Inc." site and is designated with Site Code No. 1650205091. On July 19, 2012, Bishop's filed a petition to contest the administrative citation. On July 27, 2012, the Board received a petition to contest the administrative citation from Humm. Humm's petition is considered to be filed timely under the mailbox rule because it was postmarked on July 17, 2012. *See* 415 ILCS 5/31.1(c) (2010); 35 Ill. Adm. Code 101.300(b), 108.202(c). For the reasons below, the Board accepts both respondents' petitions to contest the administrative citation, but directs Humm to file proof that the petition was serviced on the Agency.

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 at sanitary landfills or unpermitted open dumps. *See* 415 ILCS 5/3.305, 3.445, 21(o), 21(p), 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 Humm and Bishop's violated Sections 21(p)(1), (p)(3), (p)(5), (p)(7), and 55(k)(1) of the Act (415 ILCS 5/21(p)(1), (p)(3), (p)(5), (p)(7), 55(k)(1) (2010)). The Agency alleges that Humm and Bishop's violated these provisions by causing or allowing water to accumulate in used or waste tires and by causing or allowing the open dumping of waste in a manner resulting in litter, open burning, proliferation of disease vectors, and in deposition of general construction or demolition debris or clean construction and demolition debris at the Saline 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 \$7,500.

As required, the Agency has served the administrative citation on Humm and Bishop's within "60 days after the date of the observed violation." 415 ILCS 5/31.1(b) (2006); *see also* 35 Ill. Adm. Code 108.202(b). To contest an administrative citation, a respondent must file a petition with the Board no later than 35 days after being served with the administrative citation. On June 22, 2012, the Agency filed proof that it had timely served the administrative citation on Humm on June 16, 2012, and on Bishop's on June 18, 2012. Any petition for review was due on or before July 23, 2012.

On July 19, 2012, Bishop's timely filed a petition for review (Bishop's Pet.). *See* 415 ILCS 5/31.1(d) (2010); 35 Ill. Adm. Code 101.300(b), 108.204(b). Bishop's alleges it did not cause or allow the alleged violations and that the alleged violations were the result of uncontrollable circumstances. Bishop's Pet. at 1. On July 27, 2012, Humm timely filed a petition for review (Humm Pet.). *See* 415 ILCS 5/31.1(d) (2010); 35 Ill. Adm. Code 101.300(b), 108.204(b). The petition was timely filed because it was postmarked on or before the filing deadline. *Id.* Humm alleges that she does not own the property, and is therefore not liable for any fees, fines or penalties relating to the property. Humm Pet. at 1. Humm states that in the sales contract entered between her and Bishop's, which is attached to her petition, "the buyer agrees to indemnify and hold the seller [Humm], her deceased husband, and his estate harmless from all claims, suits, and damages, and any violation of any law, regulation, statute or ordinance that pertains or relates to the Real Estate, regardless of when the violation occurred." *Id.* Humm's petition indicates that the Agency was sent a copy, but the petition did not include proof of service on the Agency.

The Board accepts both petitions; however, Humm is directed to file proof of service on the Agency by September 10, 2012. 35 Ill. Adm. Code 101.304, 108.204. If Humm fails to file such proof as directed, the Board may dismiss the petition for review.

The Board directs the hearing officer to proceed expeditiously to hearing on Bishop's petition. 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, Bishop's and Humm 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.

Bishop's may withdraw its petition to contest the administrative citation at any time before the Board enters its final decision. If Bishop's choose 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 Bishop's withdraws its petition after the hearing starts, the Board will require that either Bishop's pay the hearing costs of the Board and the Agency. *See id.* at 108.500(c).

Bishop's has the burden of proof at hearing. *See* 415 ILCS 5/31(d)(2) (2010); 35 Ill. Adm. Code 108.400. If the Board finds that Bishop's violated Sections 21(p)(1), (p)(3), (p)(5),

(p)(7), and 55(k)(1) of the Act (415 ILCS 5/21(p)(1), (p)(3), (p)(5), (p)(7), 55(k)(1) (2010)), then the Board will impose civil penalties on Bishop's. The civil penalty for violating Section 21(p) or 55(k) is \$1,500 for each violation, except that the penalty amount is \$3,000 for each violation that is a person's second or subsequent adjudicated violation of that provision. 415 ILCS 4/52(b)(4-5) (2010); 35 Ill. Adm. Code 108.500. Because there are four violations of Section 21(p) and one violation of 55(k), and no indication in the record that any of these is a second or subsequent adjudicated violation by either respondent, the total civil penalty is \$7,500.00. However, if the Board finds that Bishop's 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" against Bishop's. 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 opinion and order on August 9, 2012, 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 flourish extending to the right.

John T. Therriault, Assistant Clerk
Illinois Pollution Control Board