

ILLINOIS POLLUTION CONTROL BOARD
December 6, 2012

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	
)	
v.)	AC 13-20
)	(IEPA No. 226-12-AC)
THOMAS E. BARKER and JOHN H. &)	(Administrative Citation)
DEBRA L. BARKER,)	
)	
Respondent.)	

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

On October 11, 2012, the Illinois Environmental Protection Agency (Agency) timely filed an administrative citation against Thomas E. Barker and John H. and Debra L. Barker (collectively, respondents). *See* 415 ILCS 5/31.1(c) (2010); 35 Ill. Adm. Code 101.300(b), 108.202(c). The administrative citation concerns respondents' facility located at 305 South Main Street, Clay City, Clay County. The property is commonly known to the Agency as the "Barker-Lewis" site and is designated with Site Code No. 0250055007. For the reasons below, the Board accepts respondents' amended petition to contest the administrative citation.

Under the Environmental Protection Act (Act) (415 ILC 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 August 30, 2012, respondents violated Sections 21(p)(1), 21(p)(5) and 55(k)(1) of the Act (415 ILCS 21(p)(1), 21(p)(5) and 55(k)(1) (2010)), by causing or allowing the open dumping of waste in a manner resulting in litter and proliferation of disease vectors, and causing or allowing water to accumulate in used or waste tires at the Clay 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 \$4,500.

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 November 13, 2012. On November 9, 2012, the Board received a letter from Thomas H. Barker, which the Board construed as a petition for review. *See* 415 ILCS 5/31.1(d) (2010); 35 Ill. Adm. Code 101.300(b), 108.204(b). On November 15, 2012, the Board accepted the petition as timely, but directed respondents to file an amended petition curing specified deficiencies by December 17, 2012. IEPA v. Thomas E. Barker and John H. & Debra L. Barjer, AC 13-20 (Nov. 15,

2012). On December 3, 2012, the Board received an amended petition (Am. Pet.). Respondents acknowledge that they own the site but state that they live approximately 90 minutes from it. Am. Pet. at 1. Respondents allege that this distance constitutes an uncontrollable circumstance. *Id.*; *see also* 35 Ill. Adm. Code 108.206(d). Respondents further state that “Mr. Mark Lewis is the person whom has put the Drums and Tires on the property” and that he has been issued a tire permit. Am. Pet. at 1; *see* 35 Ill. Adm. Code 108.206(b). In addition, respondents state that “[t]he drums have been labeled and all other clean up on this property is done.” Am. Pet. at 1. Finally, the Board notes that the amended petition is signed by each of the three respondents.

The Board accepts the amended 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, 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.

Respondents may withdraw their amended petition to contest the administrative citation at any time before the Board enters its final decision. If respondents choose to withdraw its amended petition, they must do so in writing, unless they do so orally at hearing. *See* 35 Ill. Adm. Code 108.208. If respondents withdraw their amended petition after the hearing starts, the Board will require them 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 respondents violated Sections 21(p)(1), 21 (p)(5) and 55(k)(1) of the Act, the Board will impose civil penalties on them. The civil penalty for violating any provision of Section 21(p) or Section 55(k) is \$1,500 for each violation, except that the penalty amount is \$3,000 for each violation that is the respondent’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 respondents have “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 opinion and order on December 6, 2012 by a vote of 5-0.



John T. Therriault, Assistant Clerk
Illinois Pollution Control Board