

ILLINOIS POLLUTION CONTROL BOARD

January 10, 2013

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	
)	
v.)	AC 13-21
)	(IEPA No. 231-12-AC)
STEVEN B. MEUSER & DEBORAH S.)	(Administrative Citation)
MEUSER and MEUSER CONSTRUCTION &)	
EXCAVATION,)	
)	
Respondents.)	

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

On October 22, 2012, the Illinois Environmental Protection Agency (Agency) timely filed an administrative citation against Steven B. Meuser & Deborah Meuser (collectively, Meusers) and Meuser Construction & Excavation (collectively, respondents). *See* 415 ILCS 5/31.1(c) (2010); 35 Ill. Adm. Code 101.300(b), 108.202(c). The administrative citation concerns Meusers' facility, which Meuser Construction & Excavation operates, located at an area just southeast of the intersection of Meuser Drive and South Washington Street, Paxton, Ford County. The property is commonly known to the Agency as the "Paxton/Meuser Construction & Excavation Inc." site and is designated with Site Code No. 0530255054. For the reasons below, the Board accepts respondents' amended 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 17, 2012, respondents violated Sections 21(p)(1) and 21(p)(7) of the Act (415 ILCS 5/21(p)(1),(p)(7) (2010)) by causing or allowing the open dumping of waste in a manner resulting in litter and in deposition of general construction or demolition debris or clean construction or demolition debris. The Agency asks the Board to impose the statutory \$1,500.00 civil penalty per violation on respondents, for a total civil penalty of \$3,000.00. As required, the Agency served the administrative citation on respondents 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).

As required, the Agency served the administrative citation on respondents 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 19, 2012. On November 27, 2012, the Board received a petition for review (Pet.) signed by Steven B. Meuser and providing in its entirety that “I, Steven B. Meuser, individually and on behalf of my wife, Deborah S. Meuser, and as President of Meuser Construction & Excavation hereby petition the Illinois Pollution Control Board for a hearing to contest the Administrative Citation dated October 5, 2012 in this case.” Pet. at 1; *see* 415 ILCS 5/31.1(d) (2010); 35 Ill. Adm. Code 101.400(a). Respondents’ filing also included the appearance of an attorney and a document entitled “Letter of Explanation” signed by Steven B. Meuser. The petition was timely filed because it was postmarked on or before the filing deadline. *See* 415 ILCS 5/31.1(d) (2010); 35 Ill. Adm. Code 101.300(b), 108.204(b). In an order dated December 6, 2012, the Board accepted the petition as timely but directed respondents to file an amended petition curing specified deficiencies by January 7, 2013, or face dismissal of the petition. IEPA v. Steven B. Meuser & Deborah S. Meuser and Meuser Construction & Excavation, AC 13-21, slip op. at 2-3 (Dec. 6, 2012).

On January 7, 2013, the Board received an amended petition (Am. Pet.). The amended petition was filed by Steven B. Meuser individually, on behalf of his wife, Deborah S. Meuser, and as President of Meuser Construction & Excavation, and is signed by respondents’ attorney. Am. Pet at 1. The amended petition states in pertinent part that “Meuser Construction was unable to prevent the violation due to uncontrollable circumstances.” *Id.*

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 petition to contest the administrative citation at any time before the Board enters its final decision. If respondents choose to withdraw their 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 petition after the hearing starts, the Board will require respondents 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 Section 21(p)(1) and 21(p)(7) of the Act, the Board will impose civil penalties on respondents. 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 that 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 order on January 10, 2013, by a vote of 5-0.

A handwritten signature in black ink, reading "John T. Therriault". The signature is written in a cursive style with a long horizontal stroke at the end.

John T. Therriault, Assistant Clerk
Illinois Pollution Control Board