

ILLINOIS POLLUTION CONTROL BOARD

March 7, 2013

ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Complainant,	)	
	)	
v.	)	AC 13-34
	)	(IEPA No. 322-12-AC)
COLONIAL BRICK CO., INC. and RODNEY	)	(Administrative Citation)
N. BROWN d/b/a BROWN TRUCKING &	)	
READY MIX,	)	
	)	
Respondents.	)	

ORDER OF THE BOARD (by J.D. O'Leary):

On January 17, 2013, the Illinois Environmental Protection Agency (Agency) timely filed an administrative citation against Colonial Brick Co., Inc., (Colonial) and Rodney N. Brown, doing business as Brown Trucking & Ready Mix (Brown) (collectively, respondents). *See* 415 ILCS 5/31.1(c) (2010); 35 Ill. Adm. Code 101.300(b), 108.202(c). The administrative citation concerns a facility located at 308 East Latimer Street in Abingdon, Knox County. The citation alleges that the site is owned by Colonial and operated by Brown. The property is commonly known to the Agency as the "Rod Brown Trucking & Ready Mix" site and is designated with Site Code No. 0950055025. For the reasons below, the Board accepts respondents' 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 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 December 12, 2012, respondents violated Sections 21(p)(1), 21(p)(7), and 55(k)(1) of the Act (415 ILCS 5/21(p)(1), 21(p)(7), 55(k)(1) (2010)) by causing or allowing the following at the Knox County site: (1) the open dumping of waste in a manner resulting in litter; (2) the open dumping of waste in a manner resulting in the deposition of general or clean construction or demolition debris; and (3) the accumulation of water in used or waste tires. 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 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

February 21, 2013. On February 21, 2013, respondents timely filed a petition (Pet.). *See* 415 ILCS 5/31.1(d) (2010); 35 Ill. Adm. Code 101.300(b), 108.204(b). The petition asserts the following, among other things: (1) Colonial owns the property but is not liable; (2) Brown is not the operator of the facility; (3) the facility is not an open dump operating without an Agency operating permit; and (4) respondents did not cause or allow the alleged open dumping or water accumulation. Pet. at 1; *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* 35 Ill. Adm. Code 108.300; 415 ILCS 5/31.1(d)(2) (2010). 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](http://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 id.* at 108.500(c).

Respondents have 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), 21(p)(7), or 55(k)(1) of the Act, the Board will impose civil penalties on respondents. The civil penalty for violating any provision of 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 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). 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).

Finally, the petition claims that "Respondent" does not have the ability to pay the civil penalty requested by the Agency. Pet. at 2. The Board observes, however, that because the Act specifies the penalty for a violation in an administrative citation proceeding, the Board "cannot consider mitigating or aggravating factors when determining penalty amounts in these cases." IEPA v. Stutsman, AC 05-70, slip op. at 2 (Sept. 21, 2006).

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 March 7, 2013 by a vote of 4-0.

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