

ILLINOIS POLLUTION CONTROL BOARD
May 20, 2021

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
v.) AC 21-6
) (IEPA No. 93-21-AC)
BARRY D. WARD,) (Administrative Citation)
)
Respondent.)

ORDER OF THE BOARD (by C.M. Santos):

On April 12, 2021, the Illinois Environmental Protection Agency (IEPA) timely filed an administrative citation against Barry D. Ward. *See* 415 ILCS 5/31.1(c) (2018); 35 Ill. Adm. Code 101.300(b), 108.202(c). The administrative citation concerns Ward’s property located at 65 Payne Drive in Goreville, Johnson County. The property is commonly known to IEPA as the “Goreville/Ward, Barry D.” site and is designated with Site Code No. 0878555021. For the reasons below, the Board accepts Ward’s petition to contest the administrative citation but directs Ward to file an amended petition to cure the petition’s deficiencies identified in this order.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2018)), 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) (2018); 35 Ill. Adm. Code 108.

In this case, IEPA alleges that on February 5, 2021, Ward violated Section 21(p)(1) of the Act (415 ILCS 5/21(p)(1) (2018)) by causing or allowing the open dumping of waste in a manner resulting in litter at the Johnson County site. IEPA asks the Board to impose on Ward the statutory \$1,500 civil penalty.

As required, IEPA served the administrative citation on Ward within “60 days after the date of the observed violation.” 415 ILCS 5/31.1(b) (2018); *see also* 35 Ill. Adm. Code 101.300(c), 108.202(b). Any petition to contest the administrative citation was due by May 6, 2021. On May 10, 2021, Ward timely filed a petition. The petition was timely filed because it was postmarked on or before the filing deadline. *See* 415 ILCS 5/31.1(d) (2018); 35 Ill. Adm. Code 101.300(b), 108.204(b).

A petition must set forth grounds for why a respondent believes that the administrative citation was improperly issued. *See* Ill. Adm. Code 108.206. Those grounds include:

- a) the respondent does not own the property,
- b) the respondent did not cause or allow the alleged violation,
- c) the citation was not timely filed or properly served, or
- d) the alleged violation was the result of uncontrollable circumstances.

35 Ill. Adm. Code 108.206; *see also* IEPA v. Bobby G. Myers and Donald D. Myers, AC 07-30, slip op. at 11 (May 21, 2009).

Although the Board accepts Ward's petition as timely filed, the Board finds that the petition is deficient. In the petition, Ward refers to "continuing efforts to have area cleaned and tires, scrap metal and trash hauled away." Pet. at 1. Attached to Ward's petition are receipts, including two for tire disposal. *Id.* at 4, 5.

A petition must set forth recognized grounds for why a respondent believes that the citation was improperly issued. *See* 35 Ill. Adm. Code 108.206. Voluntary cleanup performed by a respondent is generally neither a defense to the violations alleged nor relevant to determining the amount of a civil penalty. *See* IEPA v. Jack Wright, AC 89-227, slip op. at 7 (Aug. 30, 1990). ("The Act, by its terms, does not envision a properly issued administrative citation being dismissed or mitigated because a person is cooperative or voluntarily cleans-up the site."). This deficiency must be remedied before the case can be accepted for hearing.

The Board directs that Ward file an amended petition with the Board that states one or more grounds on which Ward contests the administrative citation. *See, e.g.,* County of Jackson v. Dan Kimmel, AC 06-21 (Feb. 16, 2006) (accepting as timely filed a petition that failed to include grounds for appeal but requiring an amended petition to cure the deficiency). In addition to filing an amended petition with the Board, Ward must serve a copy of the amended petition on IEPA and file proof of that service with the Board. *See* 35 Ill. Adm. Code 101.304. If no amended petition is filed with the Board by Monday, June 21, 2021, which is the first business day following the 30th day after the date of this order, Ward's petition will be dismissed and a default order will be entered against him, imposing the statutory \$1,500 civil penalty. *See* IEPA v. Ray Logsdon Estate, AC 05-54 (Apr. 21, 2005).

Finally, if an amended petition is filed as required by this order and Ward does not prevail on the merits of the case, Ward will have to pay not only the civil penalty but also any hearing costs of the Board and the Agency. *See* 415 ILCS 5/42(b)(4-5) (2018); 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 website at www.pcb.illinois.gov. *See* 35 Ill. Adm. Code 108.504.

IT IS SO ORDERED.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on May 20, 2021, by a vote of 4-0.

A handwritten signature in cursive script that reads "Don A. Brown". The signature is written in black ink and is positioned above a horizontal line.

Don A. Brown, Clerk
Illinois Pollution Control Board