

ILLINOIS POLLUTION CONTROL BOARD
September 16, 2008

COUNTY OF JACKSON,)
)
Complainant,)
)
v.) AC 09-9
) (Site Code No. 0778035022)
ALVIN VALDEZ and RUBEN J. VALDEZ,) (Administrative Citation)
)
Respondents.)

ORDER OF THE BOARD (by G.T. Girard):

On July 31, 2008, the County of Jackson (County) timely filed an administrative citation against Alvin Valdez and Ruben J. Valdez (respondents). *See* 415 ILCS 5/31.1(c) (2006); 35 Ill. Adm. Code 101.300(b), 108.202(c). The administrative citation concerns a property located at latitude 7.82693 and longitude 89.25043 in Jackson County, designated with Site Code No. 0778035022, and commonly known to the Illinois Environmental Protection Agency (Agency) as the “DeSoto/Alvin Valdez” site. The Board accepts as timely filed respondents’ petition to contest the administrative citation, but directs respondents to file an amended petition to cure the deficiencies identified below.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2006)), 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), (p), 31.1(c), 42(b)(4), (4-5) (2006); 35 Ill. Adm. Code 108.

In this case, the County alleges that respondents violated Sections 21(p)(1) and (p)(7) of the Act (415 ILCS 5/21(p)(1), (p)(7) (2006) (2006)) on June 25, 2008, by causing or allowing the open dumping of waste in a manner resulting in litter and the deposition of general or clean construction or demolition debris at the Jackson County site. The County asks the Board to impose on respondents the statutory civil penalty of \$1,500 for each alleged violation, for a total civil penalty of \$3,000.

As required, the County served the administrative citation on respondents within “60 days after the date of the observed violation.” 415 ILCS 5/31.1(b) (2006); *see also* 35 Ill. Adm. Code 101.300(c), 108.202(b). Specifically, the County served Ruben J. Valdez on July 28, 2008, and Alvin Valdez on August 7, 2008. Any petition to contest the administrative citation was due within 35 days after the date of service, *i.e.*, by September 2, 2008, for Ruben J. Valdez, and September 11, 2008, for Alvin Valdez. *See* 415 ILCS 5/31.1(d)(1) (2006); 35 Ill. Adm. Code 101.300(a), 108.204(b). Respondents filed a petition *pro se* with the Board on August 27, 2008. The Board accordingly accepts respondents’ petition as timely filed.

The Board finds, however, that the petition reflects deficiencies that must be remedied before this case can go forward. Specifically, the petition provides no grounds for contesting the administrative citation. A petition must set forth the reasons why a respondent believes the citation was improperly issued. *See* 35 Ill. Adm. Code 108.206 (*e.g.*, respondent “did not cause or allow the alleged violations”). Respondents’ petition states merely that respondents plan to construct a building for vehicle storage and deliver unwanted vehicles to a salvage facility. Petition at 1-2. The Board notes that voluntary clean up actions performed by a respondent after a site inspection are generally neither a defense to the violations nor relevant to determining the civil penalty amount. *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”).

The Board therefore directs respondents to file an amended petition stating the grounds on which they contest 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). If respondents fail to file an amended petition by October 16, 2008, which is the 30th day after the date of this order, respondents’ petition will be dismissed and a default order will be entered against them, imposing the \$3,000 civil penalty. *See IEPA v. Ray Logsdon Estate*, AC 05-54 (Apr. 21, 2005) (finding respondent defaulted by not filing amended petition as directed to cure deficiency in original petition).

If respondents file an amended petition pursuant to this order and do not prevail on the merits of the case, respondents will have to pay not only the \$3,000 civil penalty but also any hearing costs of the Board and the County. *See* 415 ILCS 5/42(b)(4-5) (2006); 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.

IT IS SO ORDERED.

I, John Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on September 16, 2008, by a vote of 4-0.



John Therriault, Assistant Clerk
Illinois Pollution Control Board