

ILLINOIS POLLUTION CONTROL BOARD  
October 21, 2010

ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
 )  
Complainant, )  
 )  
v. ) AC 11-4  
 ) (IEPA No. 228-10-AC)  
KAREN L. ALLEN, ) (Administrative Citation)  
 )  
Respondent. )

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

On July 30, 2010, the Illinois Environmental Protection Agency (Agency) timely filed an administrative citation against Karen L. Allen (Ms. Allen). *See* 415 ILCS 5/31.1(c) (2008); 35 Ill. Adm. Code 101.300(b), 108.202(c). The administrative citation concerns Ms. Allen’s site located at 17167 Africa Road in rural Thompsonville, Williamson County. The property is commonly known to the Agency as the “Thompsonville/Allen, Karen L.” site and is designated with Site Code No. 1998535008. On October 6, 2010, the Board received an amended petition from Ms. Allen, contesting the administrative citation. For the reasons below, the Board finds that Ms. Allen’s amended petition was timely filed and states sufficient grounds to contest the citation, but the Board directs Ms. Allen to provide the Board with documentation that she served a copy of the amended petition upon the Agency.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2008)), 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), 55(k), 31.1(c), 42(b)(4), (4-5) (2008); 35 Ill. Adm. Code 108. In this case, the Agency alleges that on July 1, 2010, Ms. Allen violated Sections 21(p)(1), (p)(3), and (p)(7) of the Act (415 ILCS 5/21(p)(1), (p)(3), (p)(7) (2008)) by causing or allowing the open dumping of waste in a manner resulting in litter, open burning, and the deposition of general or clean construction or demolition debris at Ms. Allen’s Williamson County site. The Agency asks the Board to impose the statutory \$1,500 civil penalty on Ms. Allen for each of the alleged violations of Section 21(p), for a total civil penalty of \$4,500. *See* 415 ILCS 5/42(b)(4-5) (2008).

As required, the Agency served the administrative citation on Ms. Allen within “60 days after the date of the observed violation.” 415 ILCS 5/31.1(b) (2008); *see also* 35 Ill. Adm. Code 101.300(c), 108.202(b). Any petition to contest the administrative citation was due by September 2, 2010. On August 19, 2010, a petition was timely filed. *See* 415 ILCS 5/31.1(d) (2008); 35 Ill. Adm. Code 101.300(b), 108.204(b). In an order of September 2, 2010, the Board accepted the petition as timely filed, but ordered Ms. Allen to file an amended petition to cure

certain deficiencies. The Board found that, contrary to the Board's procedural rules, the petition had failed to allege any grounds for contesting the administrative citation and also failed to include proof that the Agency had been served with a copy of the petition. *See* 35 Ill. Adm. Code 101.304, 108.206. In addition, the petition appeared to have been filed by a non-attorney other than Ms. Allen. Under the Board's procedural rules for adjudicatory proceedings, an individual must represent himself or herself or be represented by an attorney licensed and registered to practice law. 35 Ill. Adm. Code 101.400(a)(1). The Board ordered Ms. Allen to file, by October 4, 2010, an amended petition, either on her own behalf or through an attorney-at-law, stating the grounds for contesting the administrative citation. The Board also required that the amended petition be accompanied by a certificate of service documenting that Ms. Allen served a copy of the amended petition upon the Agency.

On October 6, 2010, the Board received Ms. Allen's amended petition (Am. Pet.). Because the postmark date of the amended petition met the October 4, 2010 filing deadline of the Board's order, the amended petition was timely filed. *See* 35 Ill. Adm. Code 101.300(b)(2). In the amended petition, Ms. Allen asserts that she did not violate the provisions of the Act as alleged by the Agency. Am. Pet. at 1. Ms. Allen claims that she did not "give[] anyone permission to dump any waste material by implied consent, verbal consent, or written okay." *Id.* The amended petition also states that the wood pallets, metal, and paper are in the process of being recycled, and that the tree debris occurred as a result of "the in land hurricane that occurred in May 2009." *Id.* The amended petition states sufficient grounds to contest the citation. 35 Ill. Adm. Code 108.206.

The amended petition claims that a cleanup of the site began in 2008. Am. Pet. at 1. According to Ms. Allen, "the burning was a one time occurrence that took place in 2008, and there has not been any burning since that time." *Id.* at 2. The Board notes, however, that cleanup is not a defense to a properly issued administrative citation, nor is a claim that a violation will not recur, and the Board cannot consider any factors in mitigation of penalty as the civil penalties for administrative citations are set by the Act. *See, e.g., County of Jackson v. Osinga*, AC 07-43, slip op. at 4 (Dec. 6, 2007); *IEPA v. Stutsman*, AC 05-70, slip op. at 2 (Sept. 21, 2006); *IEPA v. Jack Wright*, AC 89-227, slip op. at 7 (Aug. 30, 1990); *see also* 35 Ill. Adm. Code 108.206.

The Board finds that, while the amended petition was timely filed and satisfactorily states Ms. Allen's grounds for contesting the administrative citation, it was not accompanied by a certificate of service. The Board therefore again directs Ms. Allen to file with the Board documentation that she served a copy of the amended petition upon the Agency. *See* 35 Ill. Adm. Code 101.304. This deficiency must be remedied before the case can be accepted for hearing. If Ms. Allen fails to file the certificate of service with the Board by November 11, 2010, which is 21 days following the date of this order, the Board will dismiss the amended petition and enter a default order against Ms. Allen, finding the violations alleged and imposing the corresponding \$4,500 civil penalty.

If Ms. Allen proceeds to contest the administrative citation but does not prevail on the merits of the case, Ms. Allen will have to pay not only the \$4,500 civil penalty but also any hearing costs of the Board and the Agency. *See* 415 ILCS 5/42(b)(4-5) (2008); 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.ipcb.state.il.us](http://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 October 21, 2010, by a vote of 5-0.

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

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John Therriault, Assistant Clerk  
Illinois Pollution Control Board