

ILLINOIS POLLUTION CONTROL BOARD
January 6, 2011

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	
)	
v.)	AC 11-14
)	(IEPA No. 308-10-AC)
JASON JOHNSON SR. and ROBIN)	(Administrative Citation)
JOHNSON,)	
)	
Respondents.)	

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

On November 10, 2010, the Illinois Environmental Protection Agency (Agency) filed an administrative citation against Jason Johnson Sr. and Robin Johnson (collectively, respondents). *See* 415 ILCS 5/31.1 (2008); 35 Ill. Adm. Code 108. The administrative citation concerns respondents' facility located at 20512 E. CR. 600 N. in Kilbourne, Mason County. The property is commonly known to the Agency as the "Kilbourne/Johnson, Jason" site and is designated with Site Code No. 1258055002.

For the reasons below, the Board accepts Jason Johnson Sr.'s petition to contest the administrative citation, but dismisses Robin Johnson in the absence of proof that Robin Johnson was timely served with the citation. In this order, the Board first discusses the administrative citation, after which the Board addresses Jason Johnson Sr.'s petition and then Robin Johnson's dismissal.

ADMINISTRATIVE CITATION

Under the Act, 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) (2008); 35 Ill. Adm. Code 108.

In this case, the Agency alleges that respondents are the current owners and operators of the Mason County facility. The Agency further alleges that on September 29, 2010, respondents violated Sections 21(p)(1) and 55(k)(1) of the Act (415 ILCS 5/21(p)(1), 55(k)(1) (2008)) by causing or allowing the open dumping of waste in a manner resulting in the following: litter; and used tires not altered, covered, or otherwise prevented from accumulating water. The Agency asks the Board to impose on respondents the statutory civil penalty of \$1,500 per violation for a total civil penalty of \$3,000.

PETITION OF JASON JOHNSON SR.

The Agency alleges that it issued the administrative citation based upon a September 29, 2010 site inspection. As required, the Agency served the citation on Jason Johnson Sr. within 60 days after the date on which the alleged violations were observed. *See* 415 ILCS 5/31.1(b) (2008); *see also* 35 Ill. Adm. Code 101.300(c), 108.202(b). Specifically, on December 20, 2010, the Agency filed its proof of service of the citation with the Board. The proof of service consists of an affidavit documenting that Jason Johnson Sr. was personally served at the Menard County Jail in Petersburg on November 20, 2010. Further, the Agency timely filed the citation with the Board on November 10, 2010, “no later than 10 days after the date of service.” 415 ILCS 5/31.1(c) (2008).

To contest an administrative citation, a respondent must file a petition with the Board no later than 35 days after being served with the citation. *See* 415 ILCS 31.1(d)(1) (2008); 35 Ill. Adm. Code 108.204(b), 108.406. Accordingly, any petition from Jason Johnson Sr. to contest the citation was due by December 27, 2010. On December 27, 2010, Jason Johnson Sr. timely filed a petition on his own behalf, citing uncontrollable circumstances. *See* 415 ILCS 5/31.1(d) (2008); 35 Ill. Adm. Code 101.300(b), 108.204(b), 108.206.

The Board accepts Jason Johnson Sr.’s 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) (2008). By contesting the administrative citation, Jason Johnson Sr. may have to pay the 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 Web site at www.ipcb.state.il.us. *See* 35 Ill. Adm. Code 108.504.

Jason Johnson Sr. may withdraw his petition to contest the administrative citation at any time before the Board enters its final decision. If Jason Johnson Sr. chooses to withdraw the petition, he must do so in writing, unless done so orally at hearing. *See* 35 Ill. Adm. Code 108.208. If Jason Johnson Sr. withdraws the petition after the hearing starts, the Board will require him to pay the hearing costs of the Board and the Agency. *See id.* at 108.500(c).

The Agency has the burden of proof at hearing. *See* 415 ILCS 5/31.1(d)(2) (2008); 35 Ill. Adm. Code 108.400. If the Board finds that Jason Johnson Sr. violated Section 21(p)(1) or Section 55(k)(1), the Board will impose civil penalties on Jason Johnson Sr. The civil penalty 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) (2008); 35 Ill. Adm. Code 108.500(a). However, if the Board finds that Jason Johnson Sr. “has 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) (2008); *see also* 35 Ill. Adm. Code 108.500(b).

SERVICE ON ROBIN JOHNSON

As noted above, the Act requires that the administrative citation be served on respondent “within not more than 60 days after the date of the observed violation.” 415 ILCS 5/31.1(b) (2008); *see also* 35 Ill. Adm. Code 108.202(b). Based upon a September 29, 2010 site inspection, service of the citation was required by November 29, 2010, the first business day following the 60th day after the date of the inspection. *See* 35 Ill. Adm. Code 101.300(a). The Board’s procedural rules call for administrative citations to be served “personally, by registered or certified mail, or by messenger service.” 35 Ill. Adm. Code 101.304(c). “Proof of service of . . . administrative citations must be filed with the Board upon completion of service.” *Id.*

Based upon the proof of service filed by the Agency, the Board has already determined that the Agency timely served the citation on Jason Johnson Sr. The Agency did so personally at the Menard County Jail on November 20, 2010. There is no evidence in the record, however, that the Agency timely served the administrative citation on Robin Johnson. The administrative is accompanied by a certification that the citation was sent on November 3, 2010, by certified mail, return receipt requested, to both respondents at their alleged mailing address of 6203 N. CR. 2050 E., Kilbourne. The Board’s procedural rules, however, state that for service by certified mail, service is deemed complete on the date specified on the certified mail receipt. *See* 35 Ill. Adm. Code 101.300(c); *see IEPA v. Upper Rock Island County Landfill, Inc.*, AC 08-31, slip op. at 3 (Dec. 4, 2008) (service complete under rule on date certified mail, return receipt is signed). Here, no signed and dated certified mail, return receipt has been provided to the Board.

Nor has the Agency filed any other proof that the administrative citation was timely served on Robin Johnson. *See IEPA v. Quisenberry*, AC 11-11, slip op. at 2-3 (Dec. 2, 2010) (accepting alternative proof that citation was timely served). Under these particular circumstances, the Board, on its own motion, dismisses Robin Johnson from this case for lack of evidence of timely service. *See IEPA v. Double S. Masonry, Inc.*, AC 05-45, slip op. at 1 (Feb. 17, 2005) (Board, on own motion, dismissing one of three respondents where there was no proof of timely service on that respondent); *see also* 35 Ill. Adm. Code 108.402.

CONCLUSION

For the reasons set forth above, the Board accepts Jason Johnson Sr.’s petition for hearing and dismisses Robin Johnson from this proceeding. Future captions in this case will list Jason Johnson Sr. as the only respondent.

IT IS SO ORDERED.

I, John Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on January 6, 2011, 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 flourish extending to the right.

John Therriault, Assistant Clerk
Illinois Pollution Control Board