

ILLINOIS POLLUTION CONTROL BOARD
March 17, 2011

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
v.) AC 11-18
) (IEPA No. 375-10-AC)
JOHN and DEBRA WATSON,) (Administrative Citation)
)
Respondents.)

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

On January 20, 2011, the Board received an administrative citation (Cit.) from the Illinois Environmental Protection Agency (Agency) alleging violations by John and Debra Watson (Watsons). *See* 415 ILCS 5/31.1 (2008); 35 Ill. Adm. Code 108. The administrative citation concerns the Watsons' Union County property located in "Section 16, Township 13, Range 1W, Part of SE, NE, 8 acres." Cit. at 1. The facility is commonly known to the Agency as the "Dongola/Watson" site and is designated with Site Code No. 1818555006.

For the reasons below, the Board finds that the Agency timely served the administrative citation and that the Agency timely filed the citation. Next, the Board finds that the Watsons timely filed a petition to contest the citation; however the Watsons' petition is deficient. Therefore, the Board accepts the petition as timely filed and directs that an amended petition be filed with the Board by April 18, 2011, to cure the deficiencies identified in this order. Before turning to these matters, the Board provides background on administrative citations under the Environmental Protection Act (Act) (415 ILCS 5 (2008)) and the citation filed against the Watsons.

BACKGROUND

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 on November 9, 2010, the Watsons violated Sections 21(p)(1) and (p)(7) of the Act (415 ILCS 5/21(p)(1), (p)(7) (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. The Agency asks the Board to impose the statutory \$1,500 civil penalty per violation on the Watsons, for a total civil penalty of \$3,000.

TIMELINESS OF SERVICE OF CITATION

The Act requires that the complainant serve the administrative citation on the respondent within “60 days after the date of the observed violation.” 415 ILCS 5/31.1(b) (2008). The Act’s 60-day service requirement is a jurisdictional prerequisite for the Board to hear the administrative citation or to enter a default judgment on an administrative citation. *See IEPA v. Upper Rock Island County Landfill, Inc. and Dave Geier*, AC 08-31, slip op. at 1 (Sept. 4, 2008).

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). Those rules further state that for service by registered mail, certified mail, or messenger service, “service is deemed complete on the date specified on the registered or certified mail receipt or the messenger service receipt.” 35 Ill. Adm. Code 101.300(c); *see Upper Rock Island County Landfill*, AC 08-31, slip op. at 3 (Dec. 4, 2008) (service complete under rule on date certified mail, return receipt is signed); *West v. Nokomis Quarry Co.*, PCB 09-45, slip op. at 1 (Feb. 5, 2009) (same).

Here, the Agency inspected the site on November 9, 2010. Cit. at 1, 2. The 60th day after the date of the site inspection was Saturday, January 8, 2011. By rule, the deadline for the Agency to serve the citation was the next business day, January 10, 2011. *See* 35 Ill. Adm. Code 101.300(a). The citation indicates that the Agency sent the administrative citation to the Watsons on December 29, 2010, by certified mail # 7007 0220 0000 0152 4141. Cit. at 2. The certificate of service attached to the citation corroborates that the citation was sent to the Watsons by certified mail, return receipt requested, on December 29, 2010. The Agency filed a proof of service (Proof) with the Board on January 18, 2011, representing that the Watsons were served with the citation on December 31, 2010. Proof at 1.

However, the Agency offers proof of service other than a signed and dated certified mail, return receipt. Instead, the Agency provides “[a] copy of the Track & Confirm document, obtained and printed from the United States Postal Service website.” Proof at 1. The “Track & Confirm document” (T&C) states that certified mail # 7007 0220 0000 0152 4141 was “delivered at 2:51 pm on December 31 2010 in ANNA, IL 62906.” T&C at 1. The citation provides that the Watsons’ have an Anna, Illinois 62906 mailing address. Cit., Checklist at 1.

On February 25, 2011, the Agency’s attorney filed a letter (Ag. Ltr) with the Board. The letter states that the Agency’s attorney and Mr. Watson had a phone conversation during the week of February 7, 2011. Ag. Ltr at 1. During the phone call, “Mr. Watson explained that he had received the Administrative Citation package from Illinois EPA.” *Id.* When counsel asked Mr. Watson “if he signed the green card that Illinois EPA attached to his package,” Mr. Watson stated that “the card had been removed prior to his receiving the package, and that it was his mail carrier’s regular practice to remove the card and leave certified mail in his mailbox, without seeking a signature.” *Id.* at 1-2.

Though the Agency initiated service of the citation on December 29, 2010, by the requisite certified mail, return receipt requested, the Agency is unable to provide a signed and dated certified mail, return receipt. Nevertheless, the United States Postal Service’s Track &

Confirm document, coupled with the representations of the Agency's attorney, substantiate that the citation was actually served on December 31, 2010. As noted, the 60-day service deadline was January 10, 2011. Under these circumstances, the Board finds that the administrative citation was timely served on December 31, 2010. *See IEPA v. James and Patricia Quisenberry*, AC 11-11, slip op. at 2-3 (Dec. 2, 2010); *Upper Rock Island County Landfill*, AC 08-31, slip op. at 3 (Dec. 4, 2008).

TIMELINESS OF FILING OF CITATION

The Act requires that the complainant file the administrative citation with the Board "no later than 10 days after the date of service." 415 ILCS 5/31.1(c) (2008). The Act's 10-day filing requirement is a jurisdictional prerequisite for the Board to hear or enter a default judgment on an administrative citation. *See Upper Rock Island County Landfill*, AC 08-31, slip op. at 1 (Sept. 4, 2008).

Under the Board's procedural rules, the date of filing a document with the Board is the date on which the Clerk's Office receives the document. *See* 35 Ill. Adm. Code 101.300(b). However, under the Board's "mailbox rule," if a document sent by U.S. Mail is received by the Clerk's Office after the filing deadline, and the postmark date for the mailing of the document is on or before the filing deadline, the document is deemed filed on the postmark date. *See* 35 Ill. Adm. Code 101.300(b)(2).

As found above, the date of service of the citation on the Watsons was December 31, 2010. Accordingly, the deadline for the Agency to file the citation with the Board was January 10, 2011. The Clerk's Office received the citation on January 20, 2011, after the 10-day filing deadline. However, the citation was sent by U.S. Mail and the postmark date for the mailing was December 29, 2010. Under 35 Ill. Adm. Code 101.300(b)(2), the citation is deemed filed on the U.S. Mail postmark date of December 29, 2010. The Board therefore finds that the Agency timely filed the citation.

TIMELINESS OF PETITION

Under the Act, to contest an administrative citation, the respondent must file a petition with the Board within "35 days from the date of service" of the citation. 415 ILCS 5/31.1(d)(1) (2008). "If a respondent fails to file within the statutory 35-day period, the Board lacks jurisdiction to hear the petition." *IEPA v. Reynolds Service Co.*, AC 09-14, slip op. at 4 (Dec. 4, 2008).

Because the citation was served on December 31, 2010, any petition for review was due by February 4, 2011. The Watsons did not file a petition with the Board by that deadline. However, the letter of February 25, 2011 from the Agency's attorney attaches a petition from Mr. Watson (Pet.) "received by Illinois EPA on February 4, 2011, as indicated by the date stamp." Ag. Ltr. at 1. The letter from Agency counsel continues:

I personally received a phone message from John Watson time stamped February 4, 2011, indicating that he had some questions about filing a petition for review in

[AC 11-18]. Because I was not at work from February 2-4, 2011, I returned his call the following week. Mr. Watson explained that he had received the Administrative Citation package from Illinois EPA and called for more information on filing a petition for review on February 2nd or 3rd (because Illinois EPA offices were closed on February 2nd due to the blizzard, it is more likely that the call was on the 3rd). Mr. Watson indicated that the woman he spoke to informed him that if my name was on the Administrative Citation package, then he should direct any documents to me. Although I was not at work that day, I am aware that we had a temporary employee answering the phones, who is substituting for a clerical staff member currently subject to overseas deployment. Therefore, it is plausible that such a conversation took place.

Given the above circumstances, Illinois EPA has no objection to the Illinois Pollution Control Board considering this submission as a timely filed petition. *Id.*

The Board was presented with a nearly identical situation in County of Jackson v. Leslie Norman Fred, Sr., AC 92-39 (Aug. 13, 1992). In Fred, after the Board entered a default order against the respondent for not filing a petition by the 35-day deadline of June 25, 1992, counsel for the complainant filed a letter with the Board. *See Fred*, AC 92-39, slip op. at 1. The letter from the Jackson County State's Attorney stated:

Please be advised that the Respondent Leslie Norman Fred, Sr. filed a Petition for Review with our office within thirty five days of service of Administrative Citation in the above noted cause. Based on my representations which were erroneously given, the Respondent did not file the original Petition with the Board, but rather with our office.

Accordingly, I request that you have the final order of the Board vacated and that this matter be set for hearing *Id.*

Attached to the letter from the complainant's attorney was the respondent's petition "which bears a June 5, 1992 date stamp of the Jackson County State's Attorney." *Id.* The Board in Fred vacated its default order and accepted the petition for hearing, noting that the respondent had "made a good faith effort to timely perfect an appeal in compliance with instructions complainant admits were in error." *Id.*

In both Fred and the instant case, the *pro se* respondent made a good faith effort to properly file a petition. In both cases, the respondent was misinformed by the complainant that the petition should be filed with the complainant rather than with the Board. Further, the complainant stated to the Board that the complainant had no objection to the Board accepting the petition for hearing. Also, the complainant in each case received the petition within the statutory 35-day period after service of the citation. *See* 415 ILCS 5/31.1(d)(1) (2008).

The Board in IEPA v. Jack Busby, AC 01-6 (Dec. 7, 2000) did rule that it was without jurisdiction to hear a late-filed petition, despite claims by the respondent that he simply sent his timely petition to the wrong address. *See Busby*, AC 01-6, slip op. at 1-2. The circumstances

presented to the Board in Busby, however, are plainly distinguishable from the instant case. After the respondent in Busby failed to petition the Board within 35 days, the respondent claimed that he had tried to timely file but ended up sending the petition to “an incorrect address in Springfield.” *Id.* at 1. There was no allegation that the respondent had been misinformed by the Agency as to where he should file his petition. The Board ruled that the Board lacked jurisdiction to accept the late-filed petition. *Id.* at 2. Significantly, there was no evidence in Busby that the petition had been received, within the 35-day appeal period, by either the Board or the Agency. In the instant case, the Agency received the Watsons’ petition on the 35th day.

As the Board held in Busby, neither the Board nor a complainant can waive the 35-day jurisdictional deadline. *See* Busby, AC 01-6, slip op. at 1. Here, as in Fred, however, no such waiver is necessary. Based on this record and in accordance with Fred, the Board finds that the Watsons timely filed the petition to contest the citation.

ADEQUACY OF PETITION

The Board accepts the Watsons’ petition as timely filed; however, the Board finds the petition is deficient. According to the Watsons’ petition, Mr. Watson explained to the Agency inspector that “we did free roof work for people that could not afford it, and we would bring the debris out to my property until I could find a contractor who would let us dispose of the debris.” Pet. at 1. The petition further alleges that the site would no longer be used for this purpose and that “[t]he area that the construction debris was located has been cleaned up and hauled off.” *Id.* The petition is signed by John Watson, but not by Debra Watson. *Id.*

The Board finds that the petition reflects deficiencies that must be remedied before this case can go forward. First, a petition must set forth the reasons why the Watsons believe that this administrative citation was improperly issued. *See* 35 Ill. Adm. Code 108.206. Voluntary cleanups performed by a respondent are generally neither a defense to the violations alleged 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”). Second, though an individual may represent himself or herself, a non-attorney cannot represent another person in a Board adjudicatory proceeding, such as an administrative citation action. *See* 35 Ill. Adm. Code 101.400(a). The Watsons’ petition is signed only by Mr. Watson, but the petition does not identify him as an attorney. If John Watson is not an attorney, he cannot represent Debra Watson.

The Board therefore directs that the Watsons file an amended petition with the Board 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). The amended petition must be filed either (1) by the Watsons themselves, signed by each of them, or (2) by an attorney on behalf of the Watsons. *See* IEPA v. Ray Logsdon Estate, AC 05-54 (Mar. 3, 2005) (accepting as timely filed a petition that did not indicate whether it was filed by an attorney but requiring an amended petition to cure the deficiency). In addition to filing an amended petition with the Board, the Watsons or their attorney must serve a copy of the

amended petition on the Agency 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 April 18, 2011, which is the first business day following the 30th day after the date of this order, the Watsons' petition will be dismissed and a default order will be entered against them, imposing the statutory \$3,000 civil penalty. *See 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 an amended petition is filed pursuant to this order and the Watsons do not prevail on the merits of the case, the Watsons 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) (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.

CONCLUSION

The Board finds that the Agency timely served and filed the administrative citation. The Board further finds that the Watsons filed a petition to contest the citation within the statutory 35-day appeal period. The Board therefore accepts the petition as timely filed. The Board does not accept the petition for hearing, however, because the petition is deficient. Accordingly, the Board directs that the Watsons, either themselves or through an attorney, file with the Board an amended petition by April 18, 2011, to cure the deficiencies identified above.

IT IS SO ORDERED.

I, John Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on March 17, 2011, by a vote of 5-0.



John Therriault, Assistant Clerk
Illinois Pollution Control Board