

ILLINOIS POLLUTION CONTROL BOARD
May 5, 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 C.K. Zalewski):

PROCEDURAL HISTORY

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.

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.

By order of March 17, 2011, the Board found that the Agency timely served the administrative citation and that the Agency timely filed the citation. The Board also found that the Watsons timely filed a petition to contest the citation, but that the Watsons' petition was deficient for failure to set forth the reasons why the Watsons believe that this administrative citation was improperly issued. *See* 35 Ill. Adm. Code 108.206. Additionally, the Board found that the petition was signed only by John Watson, and not by Debra. *See* 35 Ill. Adm. Code 101.400(a). Therefore, the Board accepts the petition as timely filed, but directed that an amended petition be filed with the Board by April 18, 2011, to cure the deficiencies identified in the order.

THE AMENDED PETITION

On April 14, 2011, the Watsons filed an amended petition (Am. Pet.). This petition was signed by both Mr. and Mrs. Watson. But, it again failed to state a reason why the Agency improperly issued the citation. The amended petition states in its entirety:

As I explained earlier in our petition, we did work for people who were unable to afford roof work after storms. I would hold the material on my property until I could find a contractor with dumpster space to discard this material. I now know that this is against the law according to ILLINOIS laws. Not knowing the law is really not an excuse for this but once I was notified of this we immediately ceased storing dump material on our property. I have since not taken on a job without having a dumpster lined up for disposal. We are very sorry for any problems we caused the environment. We realize that not knowing the law is not an excuse, but would ask for leniency on this matter. Protecting the environment is of most importance to me and my wife also. Am. Pet. at 1.

The Board again finds that the petition is insufficient. As the Board attempted to explain in its last order, the administrative citation provisions of the Act do not give the Board any leeway in handling administrative citations. Once the Agency files the administrative citation, the Board has authority only to determine whether it was properly issued. If it was properly issued and a violation occurred, the Board must impose the statutory penalty of \$1,500 per violation, plus any hearing costs. *See* 415 ILCS 5/42(b)(4-5) (2008).

The usual reasons why an administrative citation is improperly issued are set out in the Board's procedural rules at Section 108.206. These are that

- a) The AC [administrative citation] Recipient does not own the property;
- b) The AC Recipient did not cause or allow the alleged violations;
- c) The AC was not timely filed or properly served; or
- d) The alleged violation was the result of uncontrollable circumstances. 35 Ill. Adm. Code 108.206.

In this case, the Watsons have already admitted that they own the property, and that they caused or allowed the violations. The Board has already found that the administrative citation was timely filed and properly served. Under these circumstances, the Watsons have limited options. They can:

- 1) Attempt to persuade the Agency to file a motion with the Board to withdraw the administrative citation, with the result that the Board dismisses the action,
- 2) Pay the administrative citation penalty of \$3,000 and avoid incurring any additional costs, or
- 3) File an amended petition asserting as reason for the appeal that in d) above, and present their case at hearing, including testimony and evidence that allow the Board to dismiss the violations. If the Board finds that the violations occurred and were not the result of uncontrollable circumstances, the Board must assess the

whole \$3,000 fine and hearing costs. 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.

The Board will give the Watsons one more opportunity to consider and act on their options. The Watsons have until June 6, 2011 to file an amended petition, signed by both John and Debra Watson or their attorney, and listing one of the reasons for appeal listed in the Board's procedural rule at 35 Ill. Adm. Code 108.206. If the Board receives a timely petition containing the information as spelled out here, the Board will set the matter for hearing, and enter a final order after both the Watsons and the Agency have had their say. As previously stated, if the Board finds that the two violations occurred, the Board will enter a final order assessing \$3,000 plus hearing costs. If the Board does not timely receive an amended petition postmarked on or before June 6, 2011, the Board will immediately enter a final order assessing the \$3,000 civil penalties. But, should the Agency file a motion to withdraw the administrative citation, the Board's practice is to grant the motion and dismiss the action without further proceedings.

Again, the Watsons have one more chance, until June 6, 2011 to file an amended petition curing the noted deficiencies, or the Board will dismiss their petition and enter its final order fining violations and imposing penalties.

IT IS SO ORDERED.

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



John Therriault, Assistant Clerk
Illinois Pollution Control Board