

ILLINOIS POLLUTION CONTROL BOARD
April 2, 2015

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	
)	
v.)	AC 15-17
)	(IEPA No. 367-14-AC)
BERNARD and CAROLYN CARR and)	(Administrative Citation)
JEFFREY YERK,)	
)	
Respondent.)	

ORDER OF THE BOARD (by D. Glosser):

On October 29, 2014, the Illinois Environmental Protection Agency (Agency) timely filed an administrative citation against Bernard and Carolyn Carr (Carr) and Jeffrey Yerk (Yerk) (collectively, respondents). On January 23, 2015, respondents timely filed an amended petition for review that the Board accepted for hearing on February 5, 2015. On March 13, 2015, respondents sent a letter, which the Board construed as a motion to dismiss. On March 26, 2015, the Agency responded in opposition to the motion. For the reasons discussed below, the Board denies the motion to dismiss.

BACKGROUND

The administrative citation concerns the Carrs' property located at 3995 North Fisk Road, Astoria, Fulton County. The property is commonly known to the Agency as the "Carr, Bernard & Carolyn" site and is designated with Site Code No. 0570055015. On December 18, 2014, the Board accepted respondent Jeffrey Yerk's petition to contest the administrative citation, but directed respondent to file an amended petition to cure deficiencies identified in the order. On January 23, 2015, respondents timely filed an amended petition for review, which the Board accepted for hearing on February 5, 2015.

On February 9, 2015, the hearing officer set a status conference for 11:45 a.m. on February 25, 2015. Hearing Officer Order Feb. 5, 2015. The hearing officer order directed the Agency to initiate the conference call. *Id.*

On February 25, 2015, a status call was held. The Agency advised the hearing officer that the Agency did not have a telephone number for the respondents. Hearing Officer Order Feb. 25, 2015. The hearing officer directed respondents to contact the Agency with a telephone number. *Id.*

On March 13, 2015, respondents filed the motion to dismiss and on March 26, 2015, the Agency responded (Resp.).

ARGUMENTS

The letter claims that respondents waited for a call from the hearing officer for over 2 hours past the scheduled time for a conference call. The respondents request the case be dismissed because the Agency did not “respond as said” and did not do any “foot work needed to fully reply to respondents before the date of the hearing”. Respondents maintain that Robert Wagner, an Agency employee in the Agency’s Peoria office, has contact information for respondents.

The Agency indicates that neither the original petition for review nor the amended petition was ever served on the Agency. On February 25, 2015, the Agency participated in the status call, and indicated that the Agency did not have a phone number for the respondents and had not been able to reach respondents. Resp. at 2. The hearing officer also directed respondents to provide a telephone number to the Agency. *Id.*

The Agency contends that the motion to dismiss is not timely, does not state a cause for dismissal and is unsupported by oath, affidavit or certification. Resp. at 3. The Agency asserts that the respondents cite no statutory, regulatory, or case law in support of the argument to dismiss.

DISCUSSION

The Board finds no merit in the respondents request to dismiss the case. There has been no hearing scheduled, and no substantive steps have been taken in this case. The hearing officer has already set another status call and provided a conference call number so that all parties can join in the status call. Therefore, the motion to dismiss is denied.

I, John T. Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on April 2, 2015, by a vote of 5-0.



John T. Therriault, Clerk
Illinois Pollution Control Board