

ILLINOIS POLLUTION CONTROL BOARD
November 5, 2015

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
v.) AC 16-2
) (IEPA No. 306-15-AC)
DAN PITNEY,) (Administrative Citation)
)
Respondent.)

ORDER OF THE BOARD (by D. Glosser):

On October 2, 2015, the Illinois Environmental Protection Agency (Agency) timely filed an administrative citation against Dan Pitney (respondent). The administrative citation concerns respondent's property located at 1431 Camp Elwood in Rockford, Winnebago County. The property is commonly known to the Agency as the "Rockford/Olbrich" site and is designated with Site Code No. 2010306760. For the reasons below, the Board accepts respondent's petition to contest the administrative citation, but directs respondents to file an amended petition to cure deficiencies identified in this order.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2014)), 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) (2014); 35 Ill. Adm. Code 108.

In this case, the Agency alleges that on August 20, 2015, respondent violated Section 21(p)(1) and Section 55(k)(1) of the Act (415 ILCS 5/21(p)(1) and 55(k)(1) (2014)) by causing or allowing open dumping in a manner resulting in litter and allowing water to accumulate in used or waste tires at the Winnebago County site. The Agency asks the Board to impose on respondent the statutory \$1,500 civil penalty for each alleged violation, for a total civil penalty of \$3,000.

As required, the Agency served the administrative citation on respondent within "60 days after the date of the observed violation." 415 ILCS 5/31.1(b) (2014); *see also* 35 Ill. Adm. Code 101.300(c), 108.202(b). Any petition to contest the administrative citation was due by November 9, 2015. On October 13, 2015, respondent timely filed a petition (Pet.). A petition must set forth recognized grounds for why a respondent believes that the administrative citation was improperly issued. *See* Ill. Adm. Code 108.206. Those grounds are provided in Section 108.206 of the Board's rules, and include:

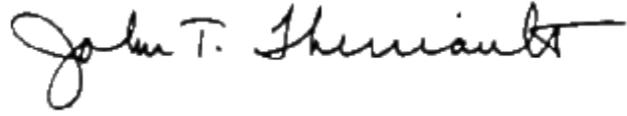
- a) the respondent does not own the property,
- b) the respondent did not cause or allow the alleged violation,
- c) the citation was not timely filed or properly served, or
- d) the alleged violation was the result of uncontrollable circumstances. 35 Ill. Adm. Code 108.206. *See also* IEPA v. Bobby G. Myers and Donald D. Myers, AC 07-30, slip op. at 11 (May 21, 2009).

Although the Board accepts respondent's petition as timely filed, the Board finds that the petition is deficient. In the petition, respondent asserts that, "[he] had a dumpster on site and had never intended to not put [the waste tires] into the dumpster." Pet. at 1. Respondent's petition further states that the tire waste was disposed of shortly after the August inspection. *Id.* Deficiencies of the respondent's complaint must be remedied before the case can be accepted for hearing. A petition must set forth recognized grounds for why a respondent believes that the administrative citation was improperly issued. *See* 5 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").

The Board therefore directs that the respondent file an amended petition with the Board that states one or more recognized 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). In addition to filing an amended petition with the Board, respondents 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 December 7, 2015, which is the first business day following the 30th day after the date of this order, respondent's 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). If an amended petition is filed pursuant to this order and respondents do not prevail on the merits of the case, respondents 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) (2014); 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.icpb.state.il.us *See* 35 Ill. Adm. Code 108.504.

IT IS SO ORDERED.

I, John T. Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on November 5, 2015, 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.

John T. Therriault, Clerk
Illinois Pollution Control Board