

ILLINOIS POLLUTION CONTROL BOARD  
December 17, 2015

ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
 )  
Complainant, )  
 )  
v. ) AC 16-5  
 ) (IEPA No. 333-15-AC)  
RONALD W. AND SUSAN A. FALMIER, ) (Administrative Citation)  
 )  
Respondents. )

ORDER OF THE BOARD (by D. Glosser):

On November 6, 2015, the Illinois Environmental Protection Agency (Agency) timely filed an administrative citation against Ronald W. and Susan A. Falmier (respondents). The administrative citation concerns respondents' property located at 206 Powell Road in Carterville, Williamson County. The property is commonly known to the Agency as the "Falmier's Auto Salvage & Towing" and is designated with Site Code No. 1990155032. For the reasons below, the Board accepts Ronald W. Falmier's petition as timely, 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 September 24, 2015, respondent violated Sections 21(p)(1), 21(p)(3), 21(p)(5), and 55(k)(1) of the Act (415 ILCS 5/21(p)(1), 21(p)(3), 21(p)(5), 55(k)(1) (2014)) by causing or allowing open dumping in a manner resulting in litter, open burning, and proliferation of disease vectors and by causing or allowing water to accumulate in used or waste tires at the Williamson 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 \$6,000.

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 December 7, 2015. On December 3, 2015, respondent timely filed a petition (Pet.) signed by Ronald W. Falmier. In the petition, Mr. Falmier indicates that he has been cleaning up the site and that "[i]t is now clean." Pet. at 1.

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. A petition must include any reasons why the recipients believe the citation was improperly issued, including:

- a) the respondent did not cause or allow the alleged violation,
- b) the citation was not timely filed or properly served, or
- c) 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 the petition as timely filed, the Board must find that it is deficient. These deficiencies must be remedied before the case can be accepted for hearing.

First, a petition must set forth recognized grounds for why respondents believes that the administrative citation was improperly issued. *See* 35 Ill. Adm. Code 108.206. Voluntary cleanups performed by a respondent are generally not a defense to the violations alleged. *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”).

Also, while an individual may represent himself before the Board, 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 petition for review was signed by Ronald W. Falmier. Unless Mr. Falmier is an attorney, he cannot represent Susan A. Falmier. Therefore, an amended petition must be filed either stating that Mr. Falmier is an attorney or that is signed by both Ronald W. Falmier and Susan A. Falmier. *See* IEPA v. Russell and Deborah Janssen, AC 15-14, slip op. at 2 (Dec. 4, 2014).

The Board therefore directs that the respondents file with the Board an amended petition addressing the deficiencies described above. *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.

The Board directs the respondents file an amended petition by Tuesday, January 19, 2015, which is the first business day after 30 days from the date of this order. *See* 35 Ill. Adm. Code 101.300. If no amended petition is filed, respondent’s petition will be dismissed and a default order will be entered against them, imposing the statutory \$6,000 civil penalty. *See* IEPA v. Ray Logsdon Estate. Logsdon Sand and Gravel, and M.K. O’Hara Construction, Inc., AC 05-54, slip op. at 4 (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](http://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 December 17, 2015, by a vote of 5-0.

A handwritten signature in black ink, reading "John T. Therriault". The signature is written in a cursive style with a large initial "J" and a long horizontal stroke at the end.

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John T. Therriault, Clerk  
Illinois Pollution Control Board