

ILLINOIS POLLUTION CONTROL BOARD  
November 16, 2023

ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Complainant,	)	
	)	
v.	)	AC 24-1
	)	(IEPA No. 129-23-AC)
LESLIE MANDRELL and THOMAS FANN	)	(Administrative Citation)
d/b/a FANN TREE SERVICE,	)	
	)	
Respondents.	)	

OPINION AND ORDER OF THE BOARD (by M.D. Mankowski):

For the reasons below, the Board grants the motion by Leslie Mandrell and Thomas Fann (collectively, respondents) to reconsider its October 5, 2023 default order finding that respondents had violated the Environmental Protection Act (Act) and assessing the statutory penalty. Upon reconsideration, the Board deems correspondence submitted to it as a petition for review. The Board accepts the petition as timely but directs respondents to file an amended petition within 30 days.

**BACKGROUND**

On August 17, 2023, the Illinois Environmental Protection Agency (IEPA) timely filed an administrative citation (AC). *See* 415 ILCS 5/31.1(c) (2022); 35 Ill. Adm. Code 101.300(b), 108.200(b)(3). The administrative citation concerned property owned by Leslie Mandrell and operated by Thomas Fann d/b/a Fann Tree Service at 11333 Cedar Grove Road in Marion, Williamson County. IEPA alleged that on June 21, 2023, respondents violated Sections 21(p)(1) and 21(p)(3) of the Act (415 ILCS 5/21(p)(1), (p)(3) (2022)) by causing or allowing the open dumping of waste in a manner resulting in litter and open burning. IEPA requested that the Board impose on respondents the statutory \$1,500 civil penalty per violation for a total civil penalty of \$3,000. IEPA served respondents with the administrative citation on August 21, 2023, which is within “60 days after the date of the observed violation.” 415 ILCS 5/31.1(b) (2022); *see* 35 Ill. Adm. Code 101.300(a), 101.300(c), 108.200(b)(1).

To contest an administrative citation, a respondent must file a petition with the Board no later than 35 days after being served with it. If the respondent fails to do so, the Board must find that the respondent committed the violations alleged and impose the corresponding civil penalty. *See* 415 ILCS 31.1(d)(1) (2022); 35 Ill. Adm. Code 101.300(b), 108.204(b), 108.406. Here, any petition for review was due by Monday, September 25, 2023. Because the Board did not receive a petition by that date from either of the two respondents, it found on October 5, 2023, that the respondents had violated the Act as alleged in the citation and assessed the statutory penalty.

## PETITION

On October 18, 2023, the Board received email correspondence from Leslie Fann, which it placed in the record of this proceeding (Pet.). Based on information in the Board's record and the circumstances of this proceeding, the Board considers Leslie Mandrell named in IEPA's citation and Leslie Fann submitting correspondence on October 16, 2023, to be the same person, and this order addresses her submission by referring to her as Ms. Fann. *See* Pet. at 3 (showing both names in single email). However, the Board asks Ms. Fann to clarify the name change.

Ms. Fann's email requested that the Board "[p]lease consider my attachments for a Motion Reconsideration." Pet. at 3. Attached to Ms. Fann's email were two letters, each of which described activity on her property and communication with an IEPA inspector about that activity. Pet. at 1, 2. Based on these factors she stated that "I wish to request that this citation be reconsidered. . . ." *Id.* at 1; *see id.* at 2 ("I would appreciate reconsideration. . .").

Ms. Fann's email added that she had "proof that I mailed an appeal timely it was mailed to the wrong address and never received." Pet. at 3. The Board first notes that IEPA's citation directs a respondent wishing to contest a citation to "file a petition for review . . . with the Clerk of the Illinois Pollution Control Board, State of Illinois Center, 100 West Randolph Street, Suite 11-500, Chicago, Illinois 60601." Pet. at 6. However, in its Proof of Service included in the citation, IEPA shows the Board's current address of 60 East Van Buren Street, Suite 630, Chicago, Illinois 60605, where it has been located since May 2022.

Attached to Ms. Fann's email are U.S. Postal Service (USPS) receipts for payment of certified mail postage in Marion, Illinois on September 19, 2023.<sup>1</sup> Pet. at 4, 5. One receipt shows payment of postage to "Chicago, IL 60601," which is consistent with the incorrect address IEPA listed in its citations. Pet. at 4. That receipt also shows payment of certified mail postage to "Springfield, IL 62794," which is consistent with IEPA's direction to provide it with a copy of any petition for review. *Id.*; *see* Pet. at 6. The two receipts show the same 25-digit tracking number for the item mailed to Chicago. Also attached to Ms. Fann's email is a document entitled "USPS Tracking." Pet. at 6-7. Although it indicates that the item was mailed at Marion, Illinois on September 19, 2023, it also indicates that delivery had not taken place by October 16, 2023. *Id.*

Within the letters attached to the email, Ms. Fann consistently refers to "we" and "us" when discussing the alleged violations. *See* Pet. Additionally, Ms. Fann's letter states:

As a business owner, we make sure we do not do any dumping of our job sites at our home, this goes to Burkdells, which is a waste location located in Benton, IL that is a free dump site. We may use some leftover woodchips for personal use as we have farm animals, but otherwise those are dumped as well at this location. We have not had any issues in almost a year in regard to dumping. Pet. at 1.

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<sup>1</sup> Under the Board's procedural rules, a document received by the Board's Clerk through U.S. Mail is considered filed on the date it was provided to the U.S. Postal Service. *See* 35 Ill. Adm. Code 101.300(b).

## DISCUSSION

In its October 5, 2023, default order, the Board found that neither of the respondents had filed a petition for review. It found that the respondents had committed the violations alleged in IEPA's citation and assessed the statutory penalty. On respondents' motion, the Board reconsiders that finding to consider new evidence submitted by respondents. *See* 35 Ill. Adm. Code 101.902.

Since the Board's October 5, 2023, default order, respondent Leslie Fann has provided to the Board evidence indicating that respondents timely filed a petition for review of the citation by sending it to the Board through USPS certified mail. With the information in the petition as noted above, and Thomas Fann d/b/a Fann Tree Service being located at the address as well, the Board deems the petition filed was intended to apply to both respondents. The Board also notes that an individual may appear on their own behalf or through an attorney-at-law licensed and registered to practice law. *See* 35 Ill. Adm. Code 101.400(a)(1). Nothing in the record indicates that Ms. Fann is a licensed attorney. Therefore Ms. Fann is unable to represent Thomas Fann, or the Fann Tree Service business. *See County of Jackson v. Bruce Reese and Bryan Bruce*, AC 17-11, slip op. at 2 (Mar. 23, 2017). In future filings Mr. Fann will have to represent himself or file an appearance of attorney on his behalf.

The citation itself directed respondents to file it at an outdated address. Reconsidering that default order, the Board is persuaded that respondents understandably relied on that incorrect address. The Board declines to place the burden of that error on respondents and trusts that IEPA will correct the Board's address in future citations. Respondents' new evidence presents unusual circumstances indicating that they timely filed a petition for review, and the Board finds that respondents have done so.

However, the Board directs respondents to file an amended petition within 30 days to address specific deficiencies under its procedural rules. First, "[a] petition must set forth grounds for why a respondent believes that the administrative citation was improperly issued." *See* Ill. Adm. Code 108.206. Those grounds 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).

Also, respondents must serve a copy of the amended petition on IEPA and file proof of service with the Board. *See* 35 Ill. Adm. Code 101.302(b), (f).

**ORDER**

1. The Board grants respondents' motion to reconsider and reconsiders its default order of October 5, 2023. On reconsideration, the Board finds that respondents timely filed a petition for review.
2. The Board directs respondents to file an amended petition addressing specific deficiencies identified above by Monday, December 18, 2023, the first business day following the 30th day after the date of this order.

IT IS SO ORDERED.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on November 16, 2023, by a vote of 3-0.



Don A. Brown, Clerk  
Illinois Pollution Control Board