

ILLINOIS POLLUTION CONTROL BOARD  
September 20, 2012

COUNTY OF VERMILION, ILLINOIS )  
)  
Complainant, )  
)  
v. ) AC 13-9  
) (Administrative Citation)  
MARK JOHNSON, )  
)  
Respondent. )

OPINION AND ORDER OF THE BOARD (by T.A. Holbrook):

On August 3, 2012, the County of Vermilion, Illinois (County) timely filed an administrative citation against Mark Johnson (respondent). *See* 415 ILCS 5/31.1(c) (2010); 35 Ill. Adm. Code 101.300(b), 108.202(c). The administrative citation concerns respondent's property located at 2053 East Road, Ridge Farm, Vermilion County. For the reasons below, the Board accepts respondent's petition to contest the administrative citation as timely filed, but directs respondent to file an amended petition to cure deficiencies identified in this order.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2010)), 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 Illinois Environmental Protection Agency (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) (2010); 35 Ill. Adm. Code 108.

In this case, the County alleges that on June 1, 2012, respondent violated Sections 21(p)(1) and 21(p)(7) of the Act (415 ILCS 5/21(p)(1) and 21(p)(7) (2010)) by causing or allowing the open dumping of waste in a manner resulting in litter and the deposition of general construction or demolition debris at the Vermilion County site. The County 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 County served the administrative citation on respondent within "60 days after the date of the observed violation." 415 ILCS 5/31.1(b) (2010); *see also* 35 Ill. Adm. Code 101.300(c), 108.202(b). Any petition to contest the administrative citation was due by September 3, 2012. On September 10, 2012, the Board received a letter from respondent's daughter, which the Board construes as a petition for review (Pet.). *See* 415 ILCS 5/31.1(d) (2010); 35 Ill. Adm. Code 101.300(b), 108.204(b). The petition was timely filed because it was postmarked on or before the filing deadline. In the petition, respondent's daughter, Tricia Copass, states that respondent owns the Vermilion County property but does not live there, that she resides on the property, and that neither she nor respondent "allow open dumping" on the

property. She also asserts that the car, tires, tub and drawers mentioned in the citation have been “removed properly.” Pet., *see* 35 Ill. Adm. Code 108.206.

The Board accepts the petition as timely but finds that the petition contains deficiencies that must be remedied before the case can be accepted for hearing. First, the petition was filed by an improper party. The administrative citation recipient may file a petition with the Board, and that recipient must be named as the respondent in such petition. 35 Ill. Adm. Code 108.204(a). Here, respondent’s daughter Tricia Copass filed the petition. Although an individual may represent himself or herself, a non-attorney cannot represent another person in a Board adjudicatory proceeding, such as an administrative citation action. *See* Ill. Adm. Code 101.400(a). The Board therefore directs respondent himself to properly file an amended petition according to 35 Ill. Adm. Code 108.204(a) and Ill. Adm. Code 101.400(a).

Second, the petition fails to state adequate grounds for appeal, which must include allegations that the recipient of the citation: 1) does not own the property, 2) did not cause or allow the alleged violations, 3) was not timely or properly served, or 4) was unable to prevent the violation due to uncontrollable circumstances. 35 Ill. Adm. Code 108.206. The Board therefore directs respondent to include any reasons for granting a petition according to 35 Ill. Adm. Code 108.206 in an amended petition.

Third, the petition omitted the relevant proceeding caption and case number. 35 Ill. Adm. Code 101.302(g). All documents filed with the Board should contain the relevant proceeding caption and number, which in this case is AC 13-9. *See* 35 Ill. Adm. Code 101.302(g). The Board thus directs respondent to include the proper caption and number on the amended petition.

Fourth, the petition improperly omitted the County’s name from the petition. A petition for review must name the recipient of the administrative citation as the respondent and the Agency or Delegated Unit as the complainant in accordance with Section 31.1(d)(2) of the Act (415 ILCS 5/31(d)(2) (2010)). *See* 35 Ill. Adm. Code 108.204. The Board directs respondent to include the County as complainant on the amended petition.

Fifth, the Board finds no evidence that the County was served with a copy of the petition. Parties in Board adjudicatory proceedings are responsible for the service of all documents they file with the Clerk’s Office. 35 Ill. Adm. Code 101.304(b). The party filing and serving the document is also responsible for providing proof of proper service. 35 Ill. Adm. Code 101.304(d). However, as there is no evidence that respondent served the County with a copy of the petition, the Board directs respondent to serve a copy of the amended petition upon the County, and to file proof of service with the Board.

Finally, the petition does not clearly state the grounds upon which it is made, nor does it offer a concise statement of the position or relief sought. 35 Ill. Adm. Code 101.504. The Board directs respondent to clearly state the relief he is seeking in his amended petition.

Under these circumstances, the Board directs respondent to file an amended petition by October 22, 2012, which is the first business day following the 30th day after the date of this order. *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). The amended petition must be properly filed by the respondent according to 35 Ill. Adm. Code 108.204(a). The amended petition must also clearly state one or more acceptable grounds for contesting the administrative citation. 35 Ill. Adm. Code 108.206. The amended petition must also provide the necessary caption and case number. 35 Ill. Adm. Code 101.302(g). The amended petition must also include the County's name on the petition, 35 Ill. Adm. Code 108.204, and respondent must also serve a copy of the amended petition on the County and file proof of service with the Board, 35 Ill. Adm. Code 101.304. Additionally, respondent must clearly state the relief he seeks. 35 Ill. Adm. Code 101.504. If respondent fails to file an amended petition in accordance with this order, the Board will dismiss the petition and enter a default order against respondent, finding the violations alleged and imposing the corresponding \$3,000 civil penalty. IEPA v. Ray Logsdon Estate, AC 05-54 (Apr. 21, 2005) (finding respondent defaulted by not filing an amended petition as directed to cure the deficiency in the original petition).

If respondent proceeds to contest the administrative citation but does not prevail on the merits of this case, respondent may have to pay not only the \$3,000 civil penalty, but also any hearing costs of the Board and the Agency. 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](http://www.ipcb.state.il.us). See 35 Ill. Adm. Code 108.504.

IT IS SO ORDERED.

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on September 20, 2012 by a vote of 4-0.



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John T. Therriault, Assistant Clerk  
Illinois Pollution Control Board