

ILLINOIS POLLUTION CONTROL BOARD

October 4, 2012

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	
)	
v.)	AC 13-11
)	(IEPA No. 206-12-AC)
HUGHES TIRE & BATTERY COMPANY ,)	(Administrative Citation)
)	
Respondent.)	

ORDER OF THE BOARD (by T.A. Hollbrook):

On September 4, 2012, the Illinois Environmental Protection Agency (Agency) timely filed an administrative citation against Hughes Tire & Battery Company (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 facility located at 730 31st Avenue, Suite 2, Milan, Rock Island County. The property is commonly known to the Agency as the "Hughes Tire-Brake & Retread" site and is designated with Site Code No. 1610656101. 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 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 Agency alleges that on July 27, 2012, respondent violated Section 55(k)(1) of the Act, 415 ILCS 55/(k)(1) (2010), by causing or allowing water to accumulate in used or waste tires at the Rock Island County site. The Agency asks the Board to impose on respondent the statutory \$3,000.00 civil penalty for the alleged violation, given it is respondent's second violation of Section 55(k)(1) of the Act. *See* IEPA v. Hughes Tire & Battery Company AC 12-47 (June 7, 2012) (finding violation of Section 55(k)(1)); IEPA v. Hughes Tire & Battery Company AC 12-46 (June 7, 2012) (same).

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) (2010); *see also* 35 Ill. Adm. Code 101.300(c), 108.202(b). Any petition to contest the administrative citation was due by October 4, 2012. On September 28, 2012, the Board received a letter from James H. Hughes (Hughes), 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). In the petition, Hughes states that "[t]he primary cause of

these violations were brought on by extreme financial losses in our retread operations . . .” specifically, the inability to pay a tire recycling company. Hughes also states they have made “tremendous progress” and are currently compliant, pointing to attached photographs of the site. Pet. at 1; *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 Hughes, but the petition does not identify Hughes as an attorney. If Hughes is not an attorney, he cannot represent the respondent. Although an individual may represent himself or herself in a Board adjudicatory proceeding, any person other than an individual (such as a company or corporation) must appear through an attorney licensed and registered to practice law. *See* 35 Ill. Adm. Code 101.400(a); 35 Ill. Adm. Code 101.202. The Board therefore directs respondent to properly file an amended petition according to 35 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. Evidence of subsequent cleanup or compliance is not sufficient grounds for appeal. IEPA v. Jack Wright, AC89-277, slip op. at 7 (Aug. 30, 1990). The petition fails to state any of these grounds for appeal. 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 13-11. *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 Agency’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 Agency as complainant on the amended petition.

Fifth, the Board finds no evidence that the Agency 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 Agency with a copy of the petition, the Board directs respondent to serve a copy of the amended petition upon the Agency, 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 through an attorney by November 5, 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 an attorney according to 35 Ill. Adm. Code 101.400(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 Agency's name on the petition, 35 Ill. Adm. Code 108.204, and respondent must also serve a copy of the amended petition on the Agency 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 \$3,000.00 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 \$3,000.00 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. *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 October 4, 2012 by a vote of 4-0.



John T. Therriault, Assistant Clerk
Illinois Pollution Control Board