

ILLINOIS POLLUTION CONTROL BOARD

February 21, 2013

COUNTY OF JACKSON	)	
	)	
	)	
Complainant,	)	
	)	
v.	)	AC 13-31
	)	(Jackson No. 077 050 5099)
CHRISTOPHER WILL,	)	(Administrative Citation)
	)	
Respondent.	)	

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

On January 11, 2013, the County of Jackson, Illinois (County) timely filed an administrative citation against Christopher Will (respondent). *See* 415 ILCS 5/31.1 (2010); 35 Ill. Adm. Code 101.200(b), 108.202(c). The administrative citation concerns a property located at 6168 Hickory Ridge Road, Pomona, Jackson County. The property is commonly known to the County as the “Pomona/Christopher Will” site and is designated with Site Code No. 077 812 5014. On February 7, 2013, respondent filed a petition (Pet.) with the Board to contest the administrative citation. 35 Ill. Adm. Code 101.200(b)(2), 108.204(b). For the reasons below, the Board accepts respondent’s petition as timely filed, but directs Respondent to file an amended petition to cure certain 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 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, 22.51(a), 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 December 18, 2012, Christopher Will violated Sections 21(p)(1), 21(p)(2), 21(p)(3), and 21(p)(7) of the Act (415 ILCS 5/21(p)(1), (p)(2), (p)(3), (p)(7) (2010)) by causing or allowing the open dumping of waste in a manner resulting in litter, scavenging at the facility, open burning, and in deposition of construction or demolition debris. 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 \$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) (2010); *see also* 35 Ill. Adm. Code 101.300(c), 108.202(b). Any petition to contest the administrative citation was due by February 8, 2013. On February 7, 2013, the Board received respondent’s petition to contest the administrative citation. The petition alleges that the materials located on respondent’s property were there for specific purposes and had accumulated due to a busy year and respondent’s lack

of time to properly organize. Pet. at 1. Respondent's petition further alleges the following: 1) the collection of tires on the property provided necessary replacements for respondent's trailers and vehicles, and the tires have been subsequently disposed of; 2) the ice box on the property was plugged in and operational; 3) 24 hours following the inspection, 90% of a scrap pile and other trash on the property had been hauled off; 4) the ladders, tarp, and in-loader for the tractor was not trash; 5) if burning wire is illegal, then it should not be available for purchase at scrap yards already burnt; 6) cardboard scraps had blown down the hill in the wind and came from new doors respondent had purchased for his home; 7) the open burning area on the hillside was root balls respondent had dug out of the hillside; 8) respondent had removed 10 feet of dirt off of the hillside and moved it into a washout area; 9) there is no creek within 1/4 mile of the washout area; 10) respondent's dumpster has been consistently full. *Id.* at 1-2. Additionally, respondent claims that at the date and time of the inspection, respondent's girlfriend and an older man were both at the house, and neither one heard or saw any inspector. Finally, respondent submits 17 photos of his property which he claims were taken the weekend after he received notice of the citation from the County. Respondent also submits a number of Cimco receipts.

The Board accepts respondent's 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 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 properly served; or (4) was unable to prevent the violation due to uncontrollable circumstances. *See* 35 Ill. Adm. Code 108.206. Evidence of subsequent cleanup or compliance is not sufficient grounds for appeal. IEPA v. Jack Wright, AC 89-277, slip op. at 7 (Aug. 30, 1990). The Board directs respondent to provide any reasons for granting a petition according to 35 Ill. Adm. Code 108.206 in an amended petition.

Additionally, the petition omits the relevant proceeding caption and number as required by the Board's procedural rules. 25 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 13-35. *See* 35 Ill. Adm. Code 101.302(g). The Board thus directs respondent to include the proper caption and number on the amended petition.

Third, the petition improperly omits the County's name from the petition. A petition for review must name the recipient of the administrative citation as the respondent and the County 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.

Fourth, the Board finds no evidence that the County was served with a copy of respondent's 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 relief sought by respondent. 35 Ill. Adm. Code 101.504. The Board therefore directs respondent to clearly state the relief he seeks in the amended petition.

The Board therefore directs respondent to file an amended petition, accompanied by a certificate of service. The amended petition must state any grounds for contesting the administrative citation. 35 Ill. Adm. Code 108.206. The certificate of service must document that respondent served a copy of the amended petition upon the County. 35 Ill. Adm. Code 101.304(d). The amended petition must also provide the necessary caption and number, as well as include the County's name on the petition. 35 Ill. Adm. Code 101.302(g); 35 Ill. Adm. Code 108.204. Additionally, the amended petition must clearly state the relief respondent seeks. 35 Ill. Adm. Code 101.504. If respondent fails to file this document with the Board by March 25, 2013, which is the first business day following the 30th day after the date of this order, then the Board will dismiss the petition and enter a default order against respondent imposing a \$6,000 penalty.

If respondent proceeds to contest the administrative citation, but does not prevail on the merits of the case, respondent will have to pay not only the \$6,000 civil penalty, but also any hearing costs of the Board and the County. *See* 415 ILCS 5/24(b)(4-5) (2010); 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.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 February 21, 2013 by a vote of 5-0.



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John T. Therriault, Assistant Clerk  
Illinois Pollution Control Board