

ILLINOIS POLLUTION CONTROL BOARD
April 18, 2013

COUNTY OF JACKSON,)
)
Complainant,)
)
v.) AC 13-39
) (Administrative Citation)
ELMER and GREG ROWE,)
)
Respondents.)

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

On March 8, 2013, the County of Jackson (County) timely filed an administrative citation against Elmer and Greg Rowe (collectively, respondents). *See* 415 ILCS 5/31.1(c) (2010); 35 Ill. Adm. Code 101.300(b), 108.202(c). The administrative citation concerns respondents' facility located in Jackson County. The property is commonly known to the Illinois Environmental Protection Agency (Agency) as the "Pomona/Elmer Rowe" site and is designated with Site Code No.077 812 5011. For the reasons below, the Board accepts respondents' petition to contest the administrative citation as timely filed, but directs respondents 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 County alleges that on January 25, 2013, respondents violated Section 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) and (p)(7) (2010)) by causing or allowing open dumping resulting in litter, scavenging, open burning and the deposition of general or clean construction or demolition debris at the site. The County asks the Board to impose on respondents the statutory \$1,500.00 civil penalty for each alleged violation, for a total civil penalty of \$6,000.00.

As required, the County served the administrative citation on respondents 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 April 4, 2013. On April 5, 2013, the Board received a letter from Elmer Rowe, which the Board construes as a petition for review (Pet.). The petition was timely filed because it was postmarked on or before the filing deadline. *See* 415 ILCS 5/31.1(d) (2010); 35 Ill. Adm. Code 101.300(b), 108.204(b). In the petition, Elmer Rowe states that his son Greg Rowe, another respondent in this case, "does not operate or access my property and there is no facility of operation." Pet. at 1.

Elmer Rowe also argues that “[t]he property is not or never has been an open dumping site. I have never operated a facility on this site.” Pet. at 1. Rowe asserts that he was at one time going to start a sawmill on this property, and he explained that this accounts for many things shown in the inspection photos. Rowe continues to state:

There was a trailer set up on property at question for my son, but after further thought needed much needed repair to be livable. So it was stripped apart and disposed of then remaining part was burnt. I have never ran or operated a landfill facility on this property or any other property I have ever owned, and I do not allow open dumping on my property. I have never allowed or cause litter on my own property, I have never caused or allowed scavenging and the only open burning was the remains of the trailer floors which was attached to frame of trailer in which the fire was a controlled fire, and it was on my property. I complied with what they ask me to do, clean up the property. Now I do not understand the violation and fines. *Id.* at 2; *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 is deficient because it is signed only by Elmer Rowe, but does not identify him as an attorney. If Elmer Rowe is not an attorney, he cannot represent the other respondent, Greg Rowe. 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* 35 Ill. Adm. Code 101.302(g). The Board therefore directs respondents to properly file an amended petition according to 35 Ill. Adm. Code 101.302(g).

Second, the petition omitted the relevant proceeding caption. 35 Ill. Adm. Code 101.302(g). All documents filed with the Board should contain the relevant proceeding caption. *See* 35 Ill. Adm. Code 101.302(g). The Board thus directs respondents to include the proper caption on the amended petition.

Third, the petition does not offer a concise statement of the position or relief sought. 35 Ill. Adm. Code 101.504. The Board directs respondents to clearly state the relief they are seeking in the amended petition.

Under these circumstances, the Board directs respondents to file an amended petition by May 20, 2013, 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 signed and filed according to 35 Ill. Adm. Code 101.400(a). The amended petition must provide the necessary caption (35 Ill. Adm. Code 101.302(g)), and respondents must clearly state the relief they seek (35 Ill. Adm. Code 101.504). If respondents fail to file an amended petition in accordance with this order, the Board will dismiss the petition and enter a default order against respondents, finding the violations alleged and imposing the corresponding \$6,000.00 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 respondents proceed to contest the administrative citation but do not prevail on the merits of this case, respondents may have to pay not only the \$6,000.00 civil penalty, but also any hearing costs of the Board and the County. 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 April 18, 2013, by a vote of 5-0.



John T. Therriault, Assistant Clerk
Illinois Pollution Control Board