

ILLINOIS POLLUTION CONTROL BOARD  
June 20, 2013

ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Complainant,	)	
	)	
v.	)	AC 13-42
	)	(IEPA No. 86-13-AC)
JAMES & PAM GREEN,	)	(Administrative Citation)
	)	
Respondents.	)	

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

On May 9, 2013, the Illinois Environmental Protection Agency (Agency) timely filed an administrative citation against James and Pam Green. *See* 415 ILCS 5/31.1(c) (2010); 35 Ill. Adm. Code 101.300(b), 108.202(c). The citation concerns the Greens' property located at 23280 Penrose Road in Coleta, Whiteside County. The property is commonly known to the Agency as the "Coleta (Genesee Twsp)/James Green" site and is designated with Site Code No. 1958070001. For the reasons below, the Board accepts the Greens' petition to contest the citation as timely filed, but directs the Greens to file an amended petition to cure deficiencies identified in this order.

Under the Act, 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 March 20, 2013, the Greens violated Sections 21(p)(1) and 55(k)(1) of the Act (415 ILCS 5/21(p)(1), 55(k)(1) (2010)) by causing or allowing the open dumping of waste in a manner resulting in litter and causing or allowing water to accumulate in used or waste tires. The Agency asks the Board to impose the statutory \$1,500 civil penalty per violation on the Greens, for a total civil penalty of \$3,000.

As required, the Agency served the administrative citation on the Greens 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). Under the Act, to contest an administrative citation, the respondent must file a petition with the Board within "35 days from the date of service" of the citation. 415 ILCS 5/31.1(d)(1) (2010). Any petition to contest the citation was due by June 14, 2013. On June 18, 2013, the Board received the Greens' petition. Under the Board's procedural rules, the date of filing a document with the Board is the date on which the Clerk's Office receives the document. *See* 35 Ill. Adm. Code 101.300(b). However, under the Board's "mailbox rule," if a document sent by U.S. Mail is received by the Clerk's Office after the filing deadline, and the postmark date for the mailing of the document is on or before the filing deadline, the document is

deemed filed on the postmark date. *See* 35 Ill. Adm. Code 101.300(b)(2). Here, although the Greens' petition was received after the June 14, 2013 deadline, the petition was timely filed because it was postmarked on June 13, 2013.

Though the Board accepts the Greens' petition as timely filed, the Board finds that the petition is deficient. The petition states that a snow storm delayed the cleanup of a "wood" pile and tires until "the thaw," adding that pictures could be taken "to show the stuff gone." Petition at 1. Waste Management invoices for Prairie Hill Recycling & Disposal Facility, dated April 10 and May 1, 2013, are attached to the petition. The petition also suggests that cleanup has been hindered by Mr. Green's serious health problems. *Id.*

Deficiencies of the Greens' petition must be remedied before the case can be accepted for hearing. A petition must set forth recognized grounds for why a respondent believes that the administrative citation was improperly issued. *See* 35 Ill. Adm. Code 108.206. Voluntary cleanups performed by a respondent are generally neither a defense to the violations alleged nor relevant to determining the civil penalty amount. *See IEPA v. Jack Wright*, AC 89-227, slip op. at 7 (Aug. 30, 1990) ("The Act, by its terms, does not envision a properly issued administrative citation being dismissed or mitigated because a person is cooperative or voluntarily cleans-up the site").

Under the Act, if the Board finds that a respondent "has shown that the violation resulted from uncontrollable circumstances, the Board shall adopt a final order which makes no finding of violation and which imposes no penalty." 415 ILCS 5/31.1(d)(2) (2010); *see also* 35 Ill. Adm. Code 108.500(b). The statutory defense of "uncontrollable circumstances," however, is available only where the *violation itself* resulted from uncontrollable circumstances. *See County of Jackson v. Egon Kamarasy*, AC 04-63, AC 04-64 (consol.), slip op. at 19 (June 16, 2005) ("Even if weather delayed Kamarasy's cleanup, it did not *cause* the violation of Sections 21(p)(1) and (p)(7) of the Act.") (emphasis in original). Accordingly, if a respondent has caused or allowed open dumping, the respondent is not excused from liability under an administrative citation merely because the subsequent cleanup may be hindered by extreme winter weather. *See IEPA v. Marshall Pekarsky*, AC 01-37 (Feb. 7, 2002), *rev'd sub nom. IEPA v. IPCB and Marshall Pekarsky*, No. 2-02-0281 (2nd Dist. Mar. 18, 2003) (unpublished order under Illinois Supreme Court Rule 23).

With respect to Mr. Green's health, the Board notes that it is not authorized to consider any factors in mitigation of penalty as the civil penalties for administrative citations are set by the Act. *See IEPA v. Stutsman*, AC 05-70, slip op. at 2 (Sept. 21, 2006). Finally, though 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 101.400(a). The Greens' petition is unsigned, but based upon references to her husband, it is apparent that Mrs. Green prepared the petition. However, the petition does not identify Mrs. Green as an attorney. If Mrs. Green is not an attorney, she cannot represent her husband.

The Board therefore directs that the Greens file an amended petition with the Board stating one or more recognized grounds on which they contest the administrative citation. *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 filed either (1) by the Greens themselves, signed by each of them, or (2) by an attorney on behalf of the Greens. *See IEPA v. Ray Logsdon Estate*, AC 05-54 (Mar. 3, 2005) (accepting as timely filed a petition that did not indicate whether it was filed by an attorney but requiring an amended petition to cure the deficiency). In addition to filing an amended petition with the Board, the Greens or their attorney must serve a copy of the amended petition on the Agency and file proof of that service with the Board. *See* 35 Ill. Adm. Code 101.304.

If no amended petition is filed with the Board by July 22, 2013, which is the first business day following the 30th day after the date of this order, the Greens' petition will be dismissed and a default order will be entered against them, imposing the statutory \$ 3,000 civil penalty. *See Ray Logsdon Estate*, AC 05-54 (Apr. 21, 2005). If an amended petition is filed pursuant to this order and the Greens do not prevail on the merits of the case, the Greens will have to pay not only the civil penalty but also any hearing costs of the Board and the Agency. *See* 415 ILCS 5/42(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 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, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on June 20, 2013, by a vote of 5-0.



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John T. Therriault, Clerk  
Illinois Pollution Control Board