

ILLINOIS POLLUTION CONTROL BOARD  
August 8, 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 J.A. Burke):

On May 9, 2013, the Illinois Environmental Protection Agency (Agency) timely filed an administrative citation against James and Pam Green (Greens). *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 Agency refers to the property as the “Coleta (Genesee Twsp)/James Green” site (Site Code No. 1958070001). The Board received an amended petition from the Greens on July 23, 2013, but directs the Greens to file a second amended petition to cure deficiencies identified in this order.

**EXPLANATION OF ADMINISTRATIVE CITATIONS**

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.

**CASE HISTORY**

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, a 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). The Board received the Greens’ timely-filed petition on June 18, 2013.

### **THE BOARD'S JUNE 20, 2013 ORDER**

On June 20, 2013, the Board issued an order accepting the Greens' petition as timely filed, but finding that the petition contained deficiencies. These three deficiencies were: (1) the Greens did not properly identify recognized grounds for why the administrative citation was improperly issued; (2) the petition was not properly signed by the Greens; and (3) the Greens did not provide proof of service of the petition on the Agency. The Board directed the Greens to file an amended petition curing these three identified deficiencies with the Board by July 22, 2013.

### **THE GREENS' AMENDED PETITION**

On July 23, 2013, the Board received the Greens' amended petition (Am. Pet.). The Board accepts the amended petition as timely filed under the "mailbox rule" because it was postmarked on or before the filing deadline (postmarked July 22, 2013).<sup>1</sup> The Greens stated in the amended petition that they are "[s]till not sure what [the Board wants, they] can't afford an attorney to figure it out." Am. Pet. at 1.

### **BOARD DISCUSSION ON PETITION REQUIREMENTS**

The Board finds that the Greens' amended petition cures some, but not all, of the previously identified deficiencies. The Greens corrected one of the deficiencies stated by the Board in its June 20, 2013 order by having both James and Pam Green sign the amended petition. However, the following two deficiencies remain. The Board directs the Greens to file a second amended petition to correct the following issues.

#### **Proof of Service**

The Greens have not provided proof that they served the amended petition on the Agency (for example, a mail receipt). Proof of service is required for documents filed with the Board. Service may be done through U.S. Mail or other mail delivery service, in person, by messenger, or as prescribed in 35 Ill. Adm. Code 101.302(d). *See* 35 Ill. Adm. Code 101.304(c). Because the Agency is a party to this case, a copy of the amended petition, and any future documents submitted to the Board, should be sent to the following:

Michelle M. Ryan, Assistant Counsel  
Division of Legal Counsel  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9276

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<sup>1</sup> 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* Ill. Adm. Code 101.300(b)(2).

The Greens must tell the Board, each time they submit a document to the Board, that they provided a copy to the Agency and the Greens must identify what delivery method they used. *See* 35 Ill. Adm. Code 101.304(c); *see also, e.g.,* Proof of Service attached to Agency initial filing on May 9, 2013. This certificate of service can be attached to the second amended petition.

### **Grounds for Review**

The Greens must describe why they believe the Agency wrongly issued the administrative citation. The Greens' cleanup of the site after receiving an administrative citation is not a defense to the alleged violations. Grounds for contesting an administrative citation include:

- a) the Greens do not own the property,
- b) the Greens did not cause or allow the alleged violations,
- c) the citation was not timely filed or properly served, or
- d) the alleged violation was the result of uncontrollable circumstances. 35 Ill. Adm. Code 108.206.

The Greens may assert any of these reasons for contesting the administrative citation in their second amended petition. The second amended petition must provide details explaining how the reason applies to their property.

### **FILING OF SECOND AMENDED PETITION**

The Greens must file a second amended petition with the Board by September 9, 2013. If no second amended petition is filed by that date, the Greens' petition will be dismissed and a default order will be entered against them, imposing the statutory \$3,000 civil penalty. If a second amended petition is filed 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. The Board's procedural rules and all other statutes and cases cited in this order are also available for reference on the Board's web site.

Additionally, the Board attaches a copy of the Board's procedural rules to this order for the Greens' reference. Administrative Citations are outlined in Part 108 of the Board's procedural rules.

IT IS SO ORDERED.

I, John T. Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on August 8, 2013, by a vote of 4-0.

A handwritten signature in black ink that reads "John T. Therriault". The signature is written in a cursive style with a long horizontal flourish at the end.

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John T. Therriault, Clerk  
Illinois Pollution Control Board