

ILLINOIS POLLUTION CONTROL BOARD  
April 3, 2008

COUNTY OF DUPAGE, )  
 )  
 Complainant, )  
 )  
 v. ) AC 08-14  
 ) (County No. DP-AC-08-02)  
 NICOLAS CRUZ, ) (Administrative Citation)  
 )  
 Respondent. )

ORDER OF THE BOARD (by G.T. Girard):

On February 8, 2008, the County of DuPage (County) timely filed an administrative citation against Nicolas Cruz (Cruz). *See* 415 ILCS 5/31.1(c) (2006); 35 Ill. Adm. Code 101.300(b), 108.202(c). The administrative citation concerns Cruz's property located at 1N570 Mac Queen Drive in West Chicago, DuPage County. The property is designated with Site Code No. 0438075019. The Board accepts as timely filed Cruz's petition to contest the administrative citation, but directs Cruz to file an amended petition to cure the deficiencies identified below.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2006)), 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 Illinois Environmental Protection Agency (Agency) or, if the Agency has delegated the authority, by a unit of local government, and only for limited types of alleged violations at sanitary landfills or unpermitted open dumps. *See* 415 ILCS 5/3.305, 3.445, 21(o), (p), 31.1(c), 42(b)(4), (4-5) (2006); 35 Ill. Adm. Code 108.

In this case, the County alleges that Cruz violated Section 21(p)(1) of the Act (415 ILCS 5/21(p)(1) (2006)) by causing or allowing the open dumping of waste resulting in litter at his West Chicago property. The County asks the Board to impose the statutory \$1,500 civil penalty on Cruz.

As required, the County served the administrative citation on Cruz within "60 days after the date of the observed violation." 415 ILCS 5/31.1(b) (2006); *see also* 35 Ill. Adm. Code 101.300(c), 108.202(b). Any petition to contest the administrative citation was due within 35 days after the date of service, *i.e.*, by March 7, 2008. *See* 415 ILCS 5/31.1(d) (2006); 35 Ill. Adm. Code 101.300(b), 108.204(b). On March 7, 2008, the Board received by U.S. Mail an envelope directed to the attention of the Board Clerk. The envelope displayed Cruz's return mailing address, the same address at which the alleged violation took place, and identified the docket number for this case, AC 08-14. The envelope, however, was empty. After inquiries by the Board Clerk, the Board on March 26, 2008, received by facsimile from the County a copy of Cruz's petition, which had been served on the County.

The County's administrative citation includes instructions on how Cruz could either pay the civil penalty or file with the Board a petition to contest. The instructions for contesting the citation (1) describe the 35-day period within which to file the petition, (2) provide the mailing address of the Board Clerk for filing the petition, and (3) direct that a copy of the petition be served on the County. Citation at 2-3. Plainly through an oversight, Cruz's petition was not placed inside the envelope that the Board received on the petition filing due date of March 7, 2008. The copy of Cruz's petition that was served on the County makes clear that Cruz wishes to contest the alleged violation of Section 21(p)(1). Under these specific circumstances, the Board treats Cruz's petition as having been filed on March 7, 2008, the date on which the Board received Cruz' envelope. The Board accordingly accepts Cruz' petition as timely filed.

The Board finds, however, that the petition reflects deficiencies that must be remedied before this case can go forward. First, the petition provides no grounds for contesting the administrative citation. A petition must set forth the reasons why the respondent believes the citation was improperly issued. *See* 35 Ill. Adm. Code 108.206. Second, 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). Cruz's petition states "we wish to contest" and concludes with the names Brad Nielsen and Nicolas Cruz. Petition at 1. The petition fails to identify Brad Nielsen as an attorney.

The Board therefore directs that Cruz, either himself or through an attorney, file an amended petition stating the grounds on which Cruz contests 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); *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). If Cruz fails to file an amended petition by May 5, 2008, which is the first business day following the 30th day after the date of this order, Cruz's petition will be dismissed and a default order will be entered against him, imposing the \$1,500 civil penalty. *See Ray Logsdon Estate*, AC 05-54 (Apr. 21, 2005) (finding respondent defaulted by not filing amended petition as directed to cure deficiency in original petition).

If Cruz files an amended petition pursuant to this order and does not prevail on the merits of the case, Cruz will have to pay not only the \$1,500 civil penalty but also any hearing costs of the Board and the County. *See* 415 ILCS 5/42(b)(4-5) (2006); 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 Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on April 3, 2008, 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 Therriault, Assistant Clerk  
Illinois Pollution Control Board