

ILLINOIS POLLUTION CONTROL BOARD

August 7, 2008

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	
)	
v.)	AC 09-2
)	(IEPA No. 85-08-AC)
THEODORE & ELIZABETH)	(Administrative Citation)
HOLLEMBEAK and HOLLEMBEAK)	
CONCRETE, INC.,)	
)	
Respondents.)	

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

On July 11, 2008, the Illinois Environmental Protection Agency (Agency) timely filed an administrative citation against Theodore and Elizabeth Hollembeak and Hollembeak Concrete, Inc.. See 415 ILCS 5/31.1(c) (2006); 35 Ill. Adm. Code 101.300(b), 108.202(c). The administrative citation concerns a facility located at 402 Pittsfield Road, Mt. Sterling, Brown County, designated with Site Code No. 0090105033, and commonly known to the Agency as "Mt. Sterling/Hollembeak Concrete." The Board accepts as timely filed Theodore Hollembeak's petition to contest the administrative citation, but directs Elizabeth Hollembeak and Hollembeak Concrete, Inc., 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 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 Agency alleges that respondents violated Sections 21(p)(1), (p)(3), and (p)(7) of the Act (415 ILCS 5/21(p)(1), (p)(3), (p)(7) (2006)) on May 30, 2008, by causing or allowing the open dumping of waste in a manner resulting in litter, open burning, and the deposition of general or clean construction or demolition debris at Hollembeak Concrete, Inc.'s Brown County facility. According to the administrative citation, Theodore and Elizabeth Hollembeak are the present owners and Hollembeak Concrete, Inc. is the present operator of the facility. The Agency asks the Board to impose on respondents the statutory \$1,500 civil penalty per violation for a total civil penalty of \$4,500.

The Agency is required to serve the administrative citation on respondents 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). Theodore Hollembeak filed a petition to contest the administrative

citation (Pet.) with the Board on July 21, 2008. In the petition for review, Theodore Hollembeak denies the allegations and states, “there were uncontrollable circumstances pertaining to the alleged violation(s).” Pet. at 1; *see* 35 Ill. Adm. Code 108.206. The Board has not yet received proof of service from the Agency, but because Theodore Hollembeak filed his petition within 60 days of the observed violation, the Board accepts the petition as timely filed.

The Board finds, however, that the petition reflects deficiencies that must be remedied before this case can be accepted for hearing with respect to respondents Elizabeth Hollembeak and Hollembeak Concrete, Inc. 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). Additionally, any person other than individuals must appear through an attorney-at-law licensed and registered to practice law. *See id.* The petition was brought on behalf of and signed by Thomas Hollembeak. Pet. at 1-2. The petition fails to identify Thomas Hollembeak as an attorney. If Elizabeth Hollembeak and Hollembeak Concrete, Inc. continue to contest the administrative citation, they must do so by filing an amended petition through an attorney-at-law.

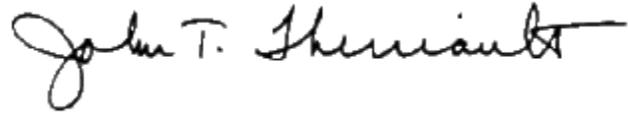
Additionally, in the petition for review, Thomas Hollembeak alleges that “the respondent is now in compliance of all three alleged violations.” Pet. at 2. The Board notes that voluntary clean up actions performed by a respondent after an Agency site inspection are generally neither a defense to the violations 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”).

The Board therefore directs that Elizabeth Hollembeak and Hollembeak Concrete, Inc. file an amended petition through an attorney-at-law. *See e.g., 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 Elizabeth Hollembeak and Hollembeak Concrete, Inc. fail to file an amended petition in a timely manner, the Board will enter default order against the remaining respondents, imposing the \$4,500 penalty. *See Ray Logsdon Estate*, AC 05-54 (Apr. 21, 2005) (finding respondent defaulted by not filing amended petition as directed to cure efficiency in original petition).

If respondents proceed to contest the administrative citation and do not prevail on the merits of the case, respondents will have to pay not only the \$4,500 civil penalty but also any hearing costs of the Board and the Agency. *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. *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 August 7, 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 stroke at the end.

John Therriault, Assistant Clerk
Illinois Pollution Control Board