

ILLINOIS POLLUTION CONTROL BOARD
December 4, 2008

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

OPINION AND ORDER OF THE BOARD (by A.S. Moore):

This is an administrative citation enforcement action brought by the Illinois Environmental Protection Agency (Agency) against three respondents: Theodore Hollembeak, Elizabeth Hollembeak, and Hollembeak Concrete, Inc. (collectively, Respondents). The case concerns a facility located at 403 Pittsfield Road, Mt. Sterling, Brown County. In an order dated August 7, 2008, the Board accepted for hearing a petition for review filed by Theodore Hollembeak and directed Elizabeth Hollembeak and Hollembeak Construction, Inc. to file an amended petition in a timely manner.

In this order, the Board acknowledges that it has previously accepted a petition for review filed by Theodore Hollembeak and directs the hearing officer to proceed expeditiously to hearing on that petition. In addition, the Board finds that Elizabeth Hollembeak and Hollembeak Concrete, Inc. have defaulted but withholds issuing its final order until the Board makes its final determination regarding Mr. Hollembeak. Before doing so, the Board provides the legal and procedural background for this case.

LEGAL BACKGROUND

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), 21(p), 31.1(c), 42(b)(4), (4-5) (2006); 35 Ill. Adm. Code 108.

The Agency or delegated local authority must serve the administrative citation on the respondent within “60 days after the date of the observed violation.” 415 ILCS 5/31.1(b) (2006); *see also* 35 Ill. Adm. Code 108.202(b). The Agency or delegated local authority must

also file a copy of the administrative citation with the Board no later than ten days after serving the respondent. *See* 415 ILCS 5/31.1(c) (2006).

To contest the administrative citation, the respondent must file a petition with the Board no later than 35 days after being served with the administrative citation. If the respondent fails to do so, the Board must find that the respondent committed the violations alleged and impose the corresponding civil penalty. *See* 415 ILCS 31.1(d)(1) (2006); 35 Ill. Adm. Code 108.204(b), 108.406.

If the respondent timely contests the administrative citation, but the complainant proves the alleged violations at hearing, the respondent will be held liable not only for the civil penalty but also for the hearing costs of the Board and the complainant. *See* 415 ILCS 5/42(b)(4-5) (2006); 35 Ill. Adm. Code 108.500. However, if the Board finds that the 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) (2006); *see also* 35 Ill. Adm. Code 108.500(b).

PROCEDURAL BACKGROUND

On July 11, 2008, the Agency timely filed an administrative citation against the Respondents. *See* 415 ILCS 5/31.1(c) (2006); 35 Ill. Adm. Code 108.202(c). The Agency alleges that Respondents violated Section 21(p)(1), (p)(3), and (p)(7) of the Environmental Protection Act (Act) (415 ILCS 5/21(p)(1), (p)(3), (p)(7) (2006)). The Agency alleges that Respondents violated these provisions by causing or allowing the open dumping of waste in a manner resulting in litter, open burning, and the deposition of general construction or demolition debris or clean construction or demolition debris at Hollembeak Concrete, Inc.’s Brown County facility. The Agency states that the inspection on which the citation is based occurred on May 30, 2008. The Agency seeks from Respondents the statutory civil penalty of \$1,500 per violation, for a total civil penalty of \$4,500.

On July 21, 2008, Mr. Hollembeak filed a petition for review (Pet.) denying the allegations and stating that there were uncontrollable circumstances pertaining to the alleged violations. Pet. at 1; *see* 35 Ill. Adm. Code 108.206. In an order dated August 7, 2008, the Board stated that, although it had not yet received proof of service from the Agency, it accepted the petition as timely filed. In the same order, the Board noted that, 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 101.400(a). The Board also noted that any person other than an individual must appear through an attorney-at-law licensed and registered to practice law. *See id.* Because the petition was signed by Theodore Hollembeak and failed to identify Theodore Hollembeak as an attorney, the Board directed Elizabeth Hollembeak and Hollembeak Concrete, Inc. to file an amended petition through an attorney-at-law if either of them wished to contest the citation. The Board’s order stated that, if Elizabeth Hollembeak and Hollembeak Concrete, Inc. failed to file an amended petition in a timely manner, it would enter a default order against them.

On September 25, 2008, the Agency filed proof that it had timely served the administrative citation on Theodore and Elizabeth Hollembeak on July 10, 2008, and on Hollembeak Concrete, Inc. on July 12, 2008. In an order dated November 5, 2008, the Board noted that it had received the Agency's proof of service, acknowledged accepting as timely a petition filed by Theodore Hollembeak on behalf of the Respondents on July 21, 2008, and directed Elizabeth Hollembeak and Hollembeak Concrete, Inc. to file an amended petition within 14 days of the date of the order. In the same order, the Board stated that, if it did not within 14 days receive an amended petition accompanied by an attorney's appearance from Elizabeth Hollembeak and Hollembeak Concrete, Inc., it would enter a default order against them and proceed to hearing only as to Theodore Hollembeak. The Board has not received an amended petition from either Elizabeth Hollembeak or from Hollembeak Concrete, Inc., and no attorney had filed an appearance on behalf of either of the two of them.

DISCUSSION

As required, the Agency served the administrative citation on the Respondents within "60 days after the date of the observed violation." 415 ILCS 5/31.1(b) (2006); *see also* 35 Ill. Adm. Code 108.202(b). To contest an administrative citation, a respondent must file a petition with the Board no later than 35 days after being served with the administrative citation. As noted above, the Board has accepted as timely a petition for review filed by Theodore Hollembeak on behalf of the Respondents. If a respondent fails to file a timely petition for review, the Board must find that the respondent committed the violations alleged and impose the corresponding statutory civil penalty. 415 ILCS 31.1(d)(1) (2006); 35 Ill. Adm. Code 108.204(b), 108.406. Here, both Elizabeth Hollembeak and Hollembeak Concrete, Inc. failed to file a timely amended petition. Accordingly, the Board finds that both Elizabeth Hollembeak and Hollembeak Concrete, Inc. violated Section 21(p)(1), (p)(3), and (p)(7) of the Act. However, the Board will withhold a final order concerning Elizabeth Hollembeak and Hollembeak Concrete, Inc. until the Board reaches a final determination regarding Theodore Hollembeak. *See Illinois Environmental Protection Agency v. Ray Logsdon Estate, Logsdon Sand and Gravel, and M.K. O'Hara Construction, Inc.*, AC 05-54, slip op. at 3 (Apr. 21, 2005).

With regard to Mr. Hollembeak, the Board directs the hearing officer to proceed expeditiously to hearing. The hearing officer will give the parties at least 21 days written notice of the hearing. 35 Ill. Adm. Code 108.300; *see also* 415 ILCS 5/31.1(d)(2) (2006). By contesting the administrative citation, Mr. Hollembeak may have to pay the 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 at the Board's offices and on the Board's Web site at www.ipcb.state.il.us. 35 Ill. Adm. Code 108.504.

Mr. Hollembeak may withdraw his petition to contest the administrative citation at any time before the Board enters its final decision. If Mr. Hollembeak chooses to withdraw its petition, he must do so in writing, unless he does so orally at hearing. *See* 35 Ill. Adm. Code 108.208. If Mr. Hollembeak withdraws its petition after the hearing starts, the Board will require Mr. Hollembeak to pay the hearing costs of the Board and the Agency. *See* 35 Ill. Adm. Code 108.500(c).

Mr. Hollembeak has the burden of proof at hearing. *See* 415 ILCS 5/31.1(d)(2) (2006); 35 Ill. Adm. Code 108.400. If the Board finds that Mr. Hollembeak violated Section 21(p)(1), (p)(3), and (p)(7) of the Act (415 ILCS 5/21(p)(1), (p)(3), (p)(7) (2006)), the Board will impose civil penalties on Mr. Hollembeak. The civil penalty for violating Section 21(p) is \$1,500 for a first offense and \$3,000 for a second or subsequent offense. 415 ILCS 5/42(b(4-5) (2006); 35 Ill. Adm. Code 108.500. However, if the Board finds that Mr. Hollembeak “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) (2006); *see also* 35 Ill. Adm. Code 108.500(b).

CONCLUSION

In today’s order, the Board acknowledges that it has previously accepted as timely a petition for review filed by Theodore Hollembeak on behalf of Respondents. Also in today’s order, the Board finds that Elizabeth Hollembeak and Hollembeak Concrete, Inc. have defaulted by failing to file an amended petition to contest the administrative citation. Accordingly, the Board finds that Elizabeth Hollembeak and Hollembeak Concrete, Inc. violated the Act as alleged. With regard to Theodore Hollembeak, the Board directs the hearing officer to proceed expeditiously to hearing. The Board withholds issuing its final order regarding Elizabeth Hollembeak and Hollembeak Concrete, Inc. until the Board makes its final decision regarding Theodore Hollembeak.

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 December 4, 2008, by a vote of 5-0.



John T. Therriault, Assistant Clerk
Illinois Pollution Control Board