

ILLINOIS POLLUTION CONTROL BOARD
July 23, 2009

COUNTY OF LASALLE,)
)
Complainant,)
)
v.) AC 09-52
) (Site Code No. 0998055002)
ERNEST W. FOSTER,) (Administrative Citation)
)
Respondent.)

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

On June 10, 2009, the County of LaSalle (County) timely filed an administrative citation against Ernest W. Foster. The administrative citation was timely filed because it was postmarked on or before the filing deadline. *See* 415 ILCS 5/31.1(c) (2008); 35 Ill. Adm. Code 101.300(b), 108.202(c). The administrative citation concerns Mr. Foster’s residential property located at 1065 North 21st Road in Deer Park, LaSalle County. The property is commonly known to the Illinois Environmental Protection Agency (Agency) as the “Ernest W. Foster Property” and is designated with Site Code No. 0998055002. For the reasons below, the Board accepts Mr. Foster’s petition as timely, but directs Mr. Foster to file an amended petition to cure the deficiencies listed herein.

Under the Environmental Protection Act (Act)¹ (415 ILCS 5 (2008)), 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) (2008); 35 Ill. Adm. Code 108.

In this case, the County alleges that on May 8, 2009, Mr. Foster violated Section 21(p)(1) of the Act (415 ILCS 5/21(p)(1) (2008)) by causing or allowing the open dumping of waste in a manner resulting in litter at Mr. Foster’s LaSalle County site. The County asks the Board to impose the statutory \$1,500 civil penalty on Mr. Foster.

As required, the County served the administrative citation on Mr. Foster within “60 days after the date of the observed violation.” 415 ILCS 5/31.1(b) (2008); *see also* 35 Ill. Adm. Code 101.300(c), 108.202(b). Any petition to contest the administrative citation was due by July 6, 2009. On the July 6, 2009 deadline, Mr. Foster timely filed a petition (Pet.) with the Board. *See* 415 ILCS 5/31.1(d) (2008); 35 Ill. Adm. Code 101.300(b), 108.204(b). The petition alleges, among other things, that Mr. Foster suffers from various health problems and his son is “taking

¹ All citations to the Act will be to the 2008 compiled statutes, unless the section at issue has been substantively amended in the 2008 compiled statutes.

the summer off” to complete work on Mr. Foster’s property. Pet. at 1- 2. The petition contains a site sketch allegedly demonstrating that certain items listed in the administrative citation have been removed. Pet. at 3. The Board, however, notes that in an administrative citation proceeding, voluntary clean up acts performed by a respondent after a site inspection are generally neither a defense to the alleged violation nor relevant in determining the civil penalty amount. *See, e.g., IEPA v. Jack Wright*, AC 89-227, slip op. at 7 (Aug. 30, 1990). Mr. Foster also maintains that he “do[es] not have a landfill” on his property, nor is he “trying to run one.” Pet. at 2. However, the administrative citation concerns allegations related to open dumping, not the ownership or operation of a landfill. Citation at 2.

The Board finds that Mr. Foster’s petition contains two deficiencies that must be remedied before the Board can accept this case for hearing. First, contrary to the Board’s procedural rules, Mr. Foster fails to allege any grounds for contesting the administrative citation. *See* 35 Ill. Adm. Code 108.206. Second, there is no indication that Mr. Foster served a copy of the petition upon the County. Under the Board’s procedural rules, Mr. Foster must serve a copy of the petition upon the County and file proof of service with the Board. *See* 35 Ill. Adm. Code 101.304.

The Board therefore directs Mr. Foster to file an amended petition for review correcting these deficiencies. If Mr. Foster fails to file an amended petition by August 24, 2009, the Board will dismiss the petition and enter a default order against Mr. Foster, imposing the \$1,500 penalty.

If Mr. Foster proceeds to contest the administrative citation but does not prevail on the merits of the case, Mr. Foster will have to pay not only the \$1,500 penalty but also any hearing costs of the Board and the Agency. *See* 415 ILCS 5/42(b)(4-5) (2008); 35 Ill. Adm. Code 108.500 (2008). A schedule of the Board’s hearing costs is available from the Clerk of the Board and on the Board’s website 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 July 23, 2009 by a vote of 5-0.



John Therriault, Assistant Clerk
Illinois Pollution Control Board