

ILLINOIS POLLUTION CONTROL BOARD

August 5, 2010

ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Complainant,	)	
	)	
v.	)	AC 11-02
	)	(IEPA No. 213-10-AC)
LINK TRUCK SERVICE, INC.,	)	(Administrative Citation)
	)	
Respondent.	)	

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

On July 13, 2010, the Illinois Environmental Protection Agency (Agency) timely filed an administrative citation against Link Truck Service, Inc. (Link Truck). The administrative citation was timely filed because it was postmarked before the filing deadline. *See* 415 ILCS 5/31.1(c) (2008); 35 Ill. Adm. Code 101.300(b)(2), 108.202(c). The administrative citation concerns Link Truck’s facility located at 718 Industrial Drive in Sparta, Randolph County. The property is commonly known to the Agency as the “Sparta/Link Truck Service Inc.” site and is designated with Site Code No. 1570600013. For the reasons below, the Board accepts Link Truck’s petition to contest the administrative citation as timely filed, but directs Link Truck to file an amended petition to cure deficiencies identified in this order.

Under the Environmental Protection Act (Act) (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), 55(k), 31.1(c), 42(b)(4), (4-5) (2008); 35 Ill. Adm. Code 108. In this case, the Agency alleges that on May 26, 2010, Link Truck violated Sections 21(p)(1) and (p)(3) of the Act (415 ILCS 5/21(p)(1), (p)(3) (2008)) by causing or allowing the open dumping of waste in a manner resulting in litter and open burning at Link Truck’s Randolph County site. The Agency asks the Board to impose on Link Truck the statutory civil penalty of \$1,500 per violation for a total civil penalty of \$3,000.

As required, the Agency served the administrative citation on Link Truck within “60 days after the date of the observed violation,” on July 15, 2010. 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 August 19, 2010. On July 23, 2010, Link Truck timely filed a petition (Pet.). *See* 415 ILCS 5/31.1(d) (2008); 35 Ill. Adm. Code 101.300(b), 108.204(b). The petition was filed by Mr. Rob Link, Mayor of Sparta and owner of Link Truck, who states that he “donated an area of [his] ground for city and county recycle collection,” including an area used for yard waste burning. Pet. at 1. Link Truck acknowledges that “some items should never have been placed in

the burn pile,” but asserts that “the area was cleaned up in a timely manner.” *Id.*; *see also id.* at 2 (“We have ceased the burn pile in question.”).

The Board accepts Link Truck’s petition as timely filed but finds that the petition contains several deficiencies that must be remedied before the case can be accepted for hearing. Link Truck does not sufficiently allege any sufficient grounds for appeal. 35 Ill. Adm. Code 108.206. Initially, the Board notes that cleanup is not a defense to a properly issued administrative citation. IEPA v. Jack Wright, AC 89-227, slip op. at 7 (Aug. 30, 1990). Further, the petition is ambiguous as to whether Link Truck is alleging that it did not cause or allow the alleged violations or that it does not own the property. It is also unclear whether Link Truck is contesting the alleged violation of Section 21(p)(1) for open dumping resulting in litter, or only the alleged violation of Section 21(p)(3) for open dumping resulting in open burning. *See* Pet. at 1 (“I am writing this in regard to the civil penalty for open burning.”). For that matter, Link Truck appears to dispute not the alleged violations, but rather only the civil penalty, asserting that “some consideration could be given on this civil penalty” based on the State of Illinois allegedly owing Sparta money. Pet. at 2; *see also id.* at 1 (“I am writing this in regard to the civil penalty . . .”). However, the Board cannot consider any factors in mitigation of penalty here as the civil penalties for administrative citations are set by the Act. IEPA v. Stutsman, AC 05-70, slip op. at 2 (Sept. 21, 2006).

In addition, as noted above, the petition was filed on behalf of Link Truck by Mr. Link, without any indication that Mr. Link is an attorney. 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. Accordingly, a corporation, like Link Truck, must appear through an attorney-at-law licensed and registered to practice law. 35 Ill. Adm. Code 101.400(a)(2). Finally, there is no indication that Link Truck served the Agency with a copy of the petition as required. 35 Ill. Adm. Code 101.304.

Under these circumstances, the Board directs Link Truck to file an amended petition through an attorney by September 6, 2010, which is the first business day following the 30th day after the date of this order. 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). The amended petition must state one or more acceptable grounds for contesting the administrative citation. 35 Ill. Adm. Code 108.206. Link Truck must also serve a copy of the amended petition upon the Agency and file proof of service with the Board. 35 Ill. Adm. Code 101.304. If Link Truck fails to file an amended petition in accordance with this order, the Board will dismiss the petition and enter a default order against Link Truck, finding the violations alleged and imposing the corresponding \$3,000 civil penalty. Ray Logsdon Estate, AC 05-54 (Apr. 21, 2005) (finding respondent defaulted by not filing an amended petition as directed to cure the deficiency in the original petition).

If Link Truck proceeds to contest the administrative citation but does not prevail on the merits of the case, Link Truck may have to pay not only the \$3,000 civil penalty, but also any hearing costs of the Board and the Agency. 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 August 5, 2010, by a vote of 5-0.

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.

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John Therriault, Assistant Clerk  
Illinois Pollution Control Board