

ILLINOIS POLLUTION CONTROL BOARD
September 16, 2010

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	
)	
v.)	AC 11-7
)	(IEPA No. 232-10-AC)
MARION METAL & ROOFING and)	(Administrative Citation)
C & T RECYCLING,)	
)	
Respondents.)	

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

On August 19, 2010, the Illinois Environmental Protection Agency (Agency) timely filed an administrative citation (AC) against Marion Metal & Roofing (Marion) and C & T Recycling (C & T). *See* 415 ILCS 5/31.1(c) (2008); 35 Ill. Adm. Code 101.300(b), 108.202(c). The administrative citation concerns a facility located at 3302 Water Tower Road, Marion, Williamson County, which the Agency alleges that Marion currently owns and C & T currently operates. The property is commonly known to the Agency as the “Marion/Marion Metal & Roofing-C&T Recycling” site and is designated with Site Code No. 1990555206. For the reasons below, the Board accepts Marion and C & T’s petitions to contest the administrative citation as timely filed, but directs C & T to file an amended petition to cure the deficiency 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 July 1, 2010, Marion and C & T 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 Marion and C & T’s Williamson County site. The Agency asks the Board to impose the statutory \$1,500.00 civil penalty on Marion and C & T.

As required, the Agency served the administrative citation on Marion and C & T 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 petitions to contest the administrative citation were due by September 23, 2010. On September 13, 2010, Marion and C & T timely filed separate petitions. *See* 415 ILCS 5/31.1(d) (2008); 35 Ill. Adm. Code 101.300(b), 108.204(b). In Marion’s petition, Marion and the current owners of the site, Thomas E. Porter and Beverly Bible (Owners), allege the following: that Marion has never been a legal entity in the State of

Illinois and has never owned the site; that neither Marion nor the Owners caused or allowed the alleged violations; that the Agency did not properly serve the AC on Marion by serving the AC on Thomas E. Porter; and that any violations resulted from uncontrollable circumstances. *See* 35 Ill. Adm. Code 108.206. In C & T's petition, C & T alleges in its petition that it did not cause the alleged violations because others would throw materials onto the site while C & T was closed. C & T also alleges that an electric company knocked down stacked pallets at the site, resulting in the alleged violations. *Id.*

First, regarding Marion, the Board accepts the petition and 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. *See* 35 Ill. Adm. Code 108.300; 415 ILCS 5/31.1(d)(2) (2008). By contesting the administrative citation, Marion may have to pay the hearing costs of the Board and the Agency. *See* 415 ILCS 5/42(b)(4-5) (2008); 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.

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

The Agency has the burden of proof at hearing. *See* 415 ILCS 5/31.1(d)(2) (2008); 35 Ill. Adm. Code 108.400. If the Board finds that Marion violated Section 21(p)(1), the Board will impose civil penalties on Marion. The civil penalty for violating any provision of subsection (p) of Section 21 is \$1,500 for each violation, except that the penalty amount is \$3,000 for each violation that is the person's second or subsequent adjudicated violation of that provision. *See* 415 ILCS 5/42(b)(4-5) (2008); 35 Ill. Adm. Code 108.500(a). However, if the Board finds that Marion "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) (2008); *see also* 35 Ill. Adm. Code 108.500(b).

Second, regarding C & T, the Board accepts C & T's petition as timely filed but finds that the petition contains a deficiency that must be remedied before the Board can accept the case for hearing. The petition was filed on behalf of C & T by Todd Booten, without indicating that Todd Booten 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 C & T, must appear through an attorney-at-law licensed and registered to practice law. 35 Ill. Adm. Code 101.400(a)(2).

Under these circumstances, the Board directs C & T to file an amended petition through an attorney by October 18, 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. C & T 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 C & T fails to file an amended petition in accordance with this order, the Board will dismiss the petition and enter a default order against C & T, finding the violations alleged and imposing the corresponding \$1,500 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 C & T proceeds to contest the administrative citation but does not prevail on the merits of the case, C & T may have to pay not only the \$1,500 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. 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 September 16, 2010, by a vote of 5-0.



John Therriault, Assistant Clerk
Illinois Pollution Control Board