

ILLINOIS POLLUTION CONTROL BOARD

June 16, 2011

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
v.) AC 11-24
) (IEPA No. 84-11-AC)
DENNIS HECK and RAYMOND A. &) (Administrative Citation)
DEANNA HARRIS,)
)
Respondents.)

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

On May 6, 2011, the Board received an administrative citation (Cit.) from the Illinois Environmental Protection Agency (Agency) alleging violations by Raymond A. Harris and Deanna Harris (Harrises) and Dennis Heck. See 415 ILCS 5/31.1 (2010); 35 Ill. Adm. Code 108. The administrative citation concerns the Harisses' Jefferson County property located at "12112 North Lighthouse Lane, Opdyke, Jefferson County." Cit. at 1. The facility is commonly known to the Agency as the "Opdyke/Heck" site and is designated with Site Code No. 0818155001.

On June 2, 2011, the Harrises filed a petition for review with the Board signed only by Deanna Harris. And on June 6, 2011, Mr. Heck filed a petition for review with the Board. The Board finds that the Harrises and Mr. Heck timely filed a petition to contest the citation; however both petitions are deficient. Therefore, the Board accepts the petitions as timely filed and directs that amended petitions be filed with the Board by July 18, 2011, to cure the deficiencies identified in this order. Before turning to these matters, the Board provides background on administrative citations under the Environmental Protection Act (Act) (415 ILCS 5 (2010)) and the citation filed against the Harrises and Mr. Heck.

BACKGROUND

Under the Act, 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. See 415 ILCS 5/21(o), 21(p), 22.51, 22.51a, 31.1(c), 42(b)(4), 42(b)(4-5), 55(k) (2010); 35 Ill. Adm. Code 108.

In this case, the Agency alleges that on March 29, 2011, the Harrises and Mr. Heck violated Sections 21(p)(1) and 21(p)(7) of the Act (415 ILCS 5/21(p)(1), 21(p)(7) (2010)) by causing or allowing the open dumping of waste in manner resulting in litter and the deposition of general or clean construction demolition debris. Cit. at 2. The Agency asks the Board to impose

the statutory \$1,500 civil penalty per violation on the respondents, the Harrises and Mr. Heck, for a total civil penalty of \$3,000. *Id.*

TIMELINESS OF PETITION FOR REVIEW

Under the Act, to contest an administrative citation, the respondent must file a petition with the Board within “35 days from the date of service” of the citation. 415 ILCS 5/31.1(d)(1)(2010). “If a respondent fails to file within the statutory 35-day period, the Board lacks jurisdiction to hear the petition.” *IEPA v. Reynolds Service Co.*, AC 09-14, slip op. at 4 (Dec. 4, 2008). Because the citation was served on May 4, 2011, to the Harrises, any petition for review was due by June 8, 2011. The Harrises filed a petition for review with the Board on June 2, 2011, and Dennis Heck filed a petition for review on June 6, 2011. Therefore, the Board finds that the Harrises and Dennis Heck timely filed the petition to contest the citation.

ADEQUACY OF PETITION FOR REVIEW

The Board accepts both petitions for review as timely filed; however, the Board finds the petitions are deficient. The Board will summarize each petition before discussing the reasons for finding both petitions to be deficient. According to the Harrises’ petition (Pet. 1), Mrs. Harris alleges that “[she] did not cause the violation.” Pet. 1 at 1. The petition for review next alleges that “Denny and Tammy Heck live on this property and are buying it.” *Id.* The petition for review finally acknowledges that “[Deanna Harris] will be appearing on [her] own behalf.” *Id.* The petition is signed only by Deanna Harris, but not Raymond A. Harris. *Id.* Additionally, Harisses’ petition does not indicate the Agency as the complainant for this administrative citation. According to Dennis Heck’s petition (Pet. 2), Mr. Heck alleges that he has cleared “all but a half a truck load” of the waste at the site. Pet. 2 at 1. Mr. Heck’s petition does not indicate that the Agency is the complainant and does not indicate that Mr. Heck is the respondent. *Id.* Mr. Heck’s petition is signed. *Id.*

Harrises’ petition for review includes a statement that sets forth the reasons why Deanna Harris believes that the administrative citation was improperly issued. Section 108.206(b) of the Board’s procedural rules states that one reason for denying the allegations of an administrative citation includes that “the AC recipient did not cause or allow the alleged violations.” 35 Ill. Adm. Code 108.206(b). Paragraph one of the petition states that “Deanna Harris did not cause the violation.” Pet. 1 at 1. Mrs. Harris’s denial is a sufficient reason for granting the petition for review.

Mr. Heck’s petition for review, however, does not include a statement that sets forth reasons why he believes that the administrative citation was improperly issued. Pet. 2 at 1; *See* 35 Ill. Adm. Code 108.206(b). Voluntary cleanups performed by a respondent are generally neither a defense to the violations alleged nor relevant to determining the civil penalty amount. *See IEPA v. Jack Wright*, AC 89-277, 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 Mr. Heck to include any reasons for granting a petition according to 35 Ill. Adm. Code 108.206(b) in an amended petition.

The Board finds that both petitions improperly omitted the Agency's name on the petitions. A petition for review must name the recipient of the administrative citation as the respondent and the Agency as the complainant in accordance with Section 31.1(d)(2) of the Act (415 ILCS 5/31(d)(2) (2010)). *See* 35 Ill. Adm. Code 108.204(a). If the Harrises and Mr. Heck decide to amend the petition, they must include their names as the respondents and the Agency's name as the complainant.

The Harrises petition is also deficient, because Deanna Harris cannot represent Raymond A. Harris unless she is an attorney. 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* Ill. Adm. Code 101.400(a). Harisses' petition is signed only by Mrs. Harris, but the petition does not identify her as an attorney. If Deanna Harris is not an attorney, she cannot represent Raymond A. Harris.

The Board directs that the Harisses file an amended petition with the Board that includes the Agency as the complainant and the Harrises as the respondents and that indicates whether Mr. Harris is also joining in the petition, any reasons for granting the petition for Mr. Harris, and his signature on the petition. *See, e.g., County of Jackson v. Dan Kimmel*, AC 06-21 (Feb. 16, 2006) (accepting as timely filed a petition that failed to include grounds for appeal but requiring an amended petition to cure the deficiency). Furthermore, the amended petition must be filed either (1) by the Harrises themselves, signed by each of them, or (2) by an attorney on behalf of the Harrises. *See 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). In addition to filing an amended petition with the Board, the Harrises or their attorney must serve a copy of the amended petition on the Agency and file proof of that service with the Board. *See* 35 Ill. Adm. Code 101.304.

The Board also directs that Mr. Heck file an amended petition with the Board that includes the Agency as the complainant and himself as the respondent and that sets forth any reasons for granting the petition. *See, e.g., County of Jackson v. Dan Kimmel*, AC 06-21 (Feb. 16, 2006) (accepting as timely filed a petition that failed to include grounds for appeal but requiring an amended petition to cure the deficiency). In addition to filing an amended petition with the Board, Mr. Heck or his attorney must serve a copy of the amended petition on the Agency and file proof of that service with the Board. *See* 35 Ill. Adm. Code 101.304.

If the amended petitions are not filed with the Board by July 18, 2011, which is the first business day following the 30th day after the date of this order, the petitions will be dismissed and a default order will be entered against them, imposing the statutory \$3,000 civil penalty. *See Ray Logsdon Estate*, AC 05-54 (Apr. 21, 2005) (finding respondent defaulted by not filing amended petition as directed to cure deficiency in original petition). If an amended petition is filed pursuant to this order and the respondents do not prevail on the merits of the case, the respondents will have to pay not only the civil penalty but also any hearing costs of the Board and the Agency. *See* 415 ILCS 5/42(b)(4-5) (2010); 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.

CONCLUSION

The Board finds that the Harrises timely filed a petition for review within the statutory 35-day appeal period. The Board therefore accepts the petition as timely filed. The Board does not accept the petition for hearing, because the petition is deficient. Accordingly the Board directs that the Harrises, whether themselves or through an attorney, file with the Board an amended petition by July 18, 2011, to cure the deficiencies identified above.

IT IS SO ORDERED.

I, John Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on June 16, 2011, 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.

John Therriault, Assistant Clerk
Illinois Pollution Control Board