

ILLINOIS POLLUTION CONTROL BOARD
June 16, 2011

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	
)	
v.)	AC 11-26
)	(IEPA No. 100-11-AC)
ESTATE OF KENNETH D. BERHENKE,)	(Administrative Citation)
)	
Respondents.)	
)	

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

On May 12, 2011, the Illinois Environmental Protection Agency (IEPA) timely filed an administrative citation against the estate of Kenneth D. Berhenke (Berhenke). *See* 415 ILCS 5/31.1(c) (2010); 35 Ill. Adm. Code 101.300(b), 108.202(c). The administrative citation concerns Berhenke’s private property located at 10012 92nd Avenue West in rural Andalusia, Rock Island County. The property is commonly known to the Agency as the “Berhenke, Mike” site and is designated with Site Code No. 1618005002. For the reasons below, the Board accepts respondents’ petition to contest the administrative citation as timely filed, but directs Berhenke to file an amended petition to cure deficiencies identified in this order.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2010)), 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 16, 2011, Berhenke violated Sections 21(p)(1), 21(p)(7), and 55(k)(1) of the Act (415 ILCS 5/21(p)(1), 21(p)(7), and 55(k)(1) (2010)) by: 1) causing or allowing the open dumping of waste in a manner resulting in litter, 2) causing or allowing the open dumping of waste in a manner resulting in deposition of general or clean construction or demolition debris, and 3) causing or allowing the open dumping of waste in a manner resulting in the collection of used tires, not altered, covered, or otherwise prevented from accumulating water, at the Rock Island County site. The Agency asks the Board to impose on Berhenke the statutory \$1,500.00 civil penalty for each alleged violation, for a total civil penalty of \$4,500.00.

As required, the Agency served the administrative citation on Berhenke within “60 days after the date of the observed violation.” 415 ILCS 5/31.1(b) (2010); *see also* 35 Ill. Adm. Code 101.300(c), 108.202(b). Any petition to contest the administrative citation was due by June 16,

2011. On June 6, 2011, Berhenke timely filed a petition (Pet.). *See* 415 ILCS 5/31.1(d) (2010); 35 Ill. Adm. Code 101.300(b), 108.204(b). The petition states that some of the area has been “cleaned out” and that a lack of funds, rainy weather, and poor health have prevented further cleaning. Pet. at 1.

The Board accepts the petition as timely but finds that the petition contains deficiencies that must be remedied before the case can be accepted for hearing. The petition fails to state adequate grounds for appeal, which must include allegations that the recipient of the citation: 1) does not own the property, 2) did not cause or allow the alleged violations, 3) was not properly served, or 4) was unable to prevent the violation due to uncontrollable circumstances. *See* 35 Ill. Adm. Code 108.206. Evidence of subsequent cleanup is not sufficient grounds for appeal. IEPA v. Jack Wright, AC 89-227, slip op. At 7 (Aug. 30, 1990). Moreover, there is no evidence that Berhenke served the Agency with a copy of the petition as required. 35 Ill. Adm. Code 101.304. Finally, the petition does not clearly state the grounds upon which it is made, nor does it offer a concise statement of the position or relief sought. 35 Ill. Adm. Code 101.504.

Under these circumstances, the Board directs Berhenke to file an amended petition itself or through an attorney by July 18, 2011, which is the first business day following the 30th day after the date of this order. *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). The amended petition must clearly state one or more acceptable grounds for contesting the administrative citation. 35 Ill. Adm. Code 108.206. Berhenke 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. Berhenke must also clearly state the relief it is seeking. 35 Ill. Adm. Code 101.504. If Berhenke fails to file an amended petition in accordance with this order, the Board will dismiss the petition and enter a default order against Berhenke, finding the violations alleged and imposing the corresponding \$4,500 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 Berhenke proceeds to contest the administrative citation but does not prevail on the merits of this case, Berhenke may have to pay not only the \$4,500 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 June 16, 2011 by a vote of 5-0.



John Therriault, Assistant Clerk

Illinois Pollution Control Board