

ILLINOIS POLLUTION CONTROL BOARD
July 7, 2011

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
v.) AC 11-28
) (IEPA No. 125-11-AC)
THAD and LINDA SHAFER,) (Administrative Citation)
)
Respondents.)

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

On June 7, 2011, the Illinois Environmental Protection Agency (Agency) timely filed an administrative citation against Thad and Linda Shafer (respondents). *See* 415 ILCS 5/31.1(c) (2010); 35 Ill. Adm. Code 101.300(b), 108.202(c). The administrative citation concerns respondents' open dump facility located at 984 US Route 40, Jewett, Cumberland County. The property is commonly known to the Agency as the "Jewett/Shafer" site and is designated with Site Code No. 0350105004. For the reasons below, the Board accepts respondents' petition to contest the administrative citation as timely filed, but directs respondents 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 April 7, 2011, respondents violated Sections 21(p)(1) and 21(p)(7) of the Act (415 ILCS 5/21(p)(1) and 21(p)(7) (2010)) by: 1) causing or allowing the open dumping of waste in a manner resulting in litter and 2) causing or allowing the open dumping of waste in a manner resulting in deposition of general construction or demolition debris or clean construction or demolition debris at the Cumberland County site. The Agency asks the Board to impose on respondents the statutory \$1,500 civil penalty for each alleged violation, for a total civil penalty of \$3,000.

As required, the Agency served the administrative citation on respondents 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 is due by July 12, 2011. On June 20, 2011, respondents 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 the citation is "flawed" and that some of the field inspector's report is "nothing more than lies." Pet. at 1. The

petition also states that the field inspector violated the 4th and 5th Amendments to the U.S. Constitution and erred in his Open Dump Inspection Checklist and Narrative Inspection Report. *Id.*

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 timely or properly served, or 4) was unable to prevent the violation due to uncontrollable circumstances. 35 Ill. Adm. Code 108.206. The Board therefore directs respondents to include any reasons for granting a petition according to 35 Ill. Adm. Code 108.206 in an amended petition.

Specifically, the Board finds that the petition improperly omitted the Agency's name and Linda Shafer's name on the petition. 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. The Board directs respondents to include the Agency as complainant and both respondents as respondents on the amended petition.

The petition is also deficient, because Thad Shafer cannot represent Linda Shafer unless he 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). The petition is signed only by Thad Shafer, but the petition does not identify him as an attorney. If Thad Shafer is not an attorney, he cannot represent Linda Shafer.

In addition, the Board finds that the petition improperly omitted the relevant proceeding caption and number as required. 35 Ill. Adm. Code 101.302(g). All documents filed with the Board should contain the relevant proceeding caption and number. *See* 35 Ill. Adm. Code 101.302(g). The Board directs respondents to include the proper caption and number on the amended petition.

Furthermore, the Board finds no evidence that respondents served the Agency with a copy of the petition. 35 Ill. Adm. Code 101.304. Parties in Board adjudicatory proceedings are responsible for the service of all documents they file with the Clerk's Office. 35 Ill. Adm. Code 101.304(b). The party filing and serving the document is responsible for providing proof of proper service. 35 Ill. Adm. Code 101.304(d). The Board directs respondents to serve a copy of the amended petition upon the Agency and file proof of service with the Board.

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. The Board directs respondents to clearly state the relief they are seeking in their amended petition.

Under these circumstances, the Board directs respondents to file an amended petition through an attorney by August 8, 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. The amended petition must also provide the names of all respondents and complainants involved as well as the necessary caption and number. 35 Ill. Adm. Code 108.204 and 101.302(g). Respondents 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. Additionally, respondents must clearly state the relief they seek. 35 Ill. Adm. Code 101.504. If respondents fail to file an amended petition in accordance with this order, the Board will dismiss the petition and enter a default order against respondents, 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 respondents proceed to contest the administrative citation but does not prevail on the merits of this case, respondents 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. 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 7, 2011, by a vote of 5-0.



John Therriault, Assistant Clerk
Illinois Pollution Control Board