

ILLINOIS POLLUTION CONTROL BOARD
July 21, 2011

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	
)	
v.)	AC 11-31
)	(IEPA No.128-11-AC)
PATRICK D. & MONIQUE D. PATTERSON,)	(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 Patrick D & Monique D. Patterson (Pattersons). *See* 415 ILCS 5/31.1(c) (2010); 35 Ill. Adm. Code 101.300(b), 108.202(c). The administrative citation concerns the Pattersons’ residential property located at 6009 Old Salem Lane, Springfield, Sangamon County. The property is commonly known to the Agency as the “Springfield/Patterson” site and is designated with Site Code No. 1671209263. For the reasons below, the Board accepts respondents’ petition to contest the administrative citation, but directs the Pattersons 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 6, 2011, the Pattersons violated Sections 21(p)(1), 21(p)(3), and 21(p)(7) of the Act (415 ILCS 5/21(p)(1),(3),(7) (2010)) by causing or allowing the open dumping of waste in a manner resulting in: 1) litter, 2) open burning, and 3) the deposition of general or clean construction debris or demolition debris at the Sangamon County site. The Agency asks the Board to impose on the Pattersons 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 the Pattersons 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 July 7, 2011. On July 6, 2011, the Pattersons 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 protests two of the Agency’s three alleged violations, including the dumping of waste resulting in litter and the deposition of

construction or demolition debris. Pet. at 1. With regard to the alleged litter violation, the Pattersons claim that most of the small items in the yard “are used by a 6 year old in his play time.” *Id.* The petition also alleges that the horse matting is “very difficult” to stack “in an orderly fashion” and the petition offers explanations for the use of other items found in the yard, presumably alleging that they do not constitute litter. *Id.* With regard to the alleged construction debris, the Pattersons again explain their planned uses for the alleged debris. *Id.* at 1-2. Finally, the Pattersons claim that they have pictures of a dumpster they used to clean up “stained soil and other fragments.” *Id.* at 2.

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. First, there is no evidence that the Pattersons served the Agency with a copy of the petition as required. 35 Ill. Adm. Code 101.304. Moreover, 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). In addition, evidence that some debris is not easily stacked is not sufficient grounds for appeal.

Under these circumstances, the Board directs the Pattersons to file an amended petition itself or through an attorney by August 22, 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 Pattersons 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 the Pattersons fail to file an amended petition in accordance with this order, the Board will dismiss the petition and enter a default order against the Pattersons, 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 the Pattersons proceed to contest the administrative citation but do not prevail on the merits of this case, the Pattersons 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 July 21, 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 flourish at the end.

John Therriault, Assistant Clerk
Illinois Pollution Control Board