

ILLINOIS POLLUTION CONTROL BOARD
September 6, 2012

MACON COUNTY ENVIRONMENTAL)
MANAGEMENT DEPARTMENT,)
)
Complainant,)
)
v.) AC 12-59
) (MCEMD No. 1158015021: 2012-01)
DALE PUGSLEY and TRACY KATER,) (Administrative Citation)
)
Respondents.)
)

OPINION AND ORDER OF THE BOARD (by T.A. Holbrook):

On June 20, 2012, the Macon County Environmental Management Department (Macon County) timely filed an administrative citation (AC) against Dale Pugsley and Tracy Kater (collectively, respondents). *See* 415 ILCS 5/31.1(c) (2010); 35 Ill. Adm. Code 101.300(b), 108.202(c). The administrative citation concerns respondents' property located 5534 Pleasant View Road, Macon County. The property is designated with Parcel No. 02-15-08-400-011, with an alternate parcel designation of 15-08-400-011. On August 6, 2012, the Board received a timely petition to contest the administrative citation (Pet.) from respondents. In an order dated August 9, 2012, the Board accepted the petition but directed respondents to file an amended petition curing identified deficiencies. On August 28, 2012, respondents timely filed an amended petition (Am. Pet.). For the reasons below, the Board accepts the amended petition to contest the administrative citation.

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 Illinois Environmental Protection Agency (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, Macon County alleges that on June 12, 2012, respondents violated Sections 21(p)(1), 21(p)(3), and 21(p)(7) of the Act (415 ILCS 5/21(p)(1), 21(p)(3), and 21(p)(7) (2010)) by causing or allowing the open dumping of waste resulting in litter, open burning, and the deposition of general construction or demolition debris at the Macon County site. Macon County asks the Board to impose on respondents the statutory \$1,500 civil penalty for each alleged violation, for a total civil penalty of \$4,500.¹

¹ The citation contained a scrivener's error, erroneously multiplying \$1,500 per violation by three violations to arrive at a total civil penalty of \$1,500. AC at 2. The complaint later refers to the correct total penalty amount of \$4,500. AC at 3. It should be noted that, if the Board finds a

As required, Macon County 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). As noted above, the Board on August 6, 2012, received a petition to contest the administrative citation from respondents. Although the Board accepted the petition, the Board found that it contained deficiencies that must be remedied before the case could be accepted for hearing. First, the Board noted that Tracy Kater has signed the petition on her own behalf and as “Tracy Kater for Dale Pugsley.” Pet. at 2. While Tracy Kater may represent herself in this matter, she is not able to represent Dale Pugsley unless she is a registered attorney, which is not shown in the record. *See* 35 Ill. Adm. Code 101.400(a)(1). Second, the Board noted that there was no indication that respondents served a copy of the petition upon the Macon County Environmental Management Department. *See* 35 Ill. Adm. Code 101.304. Third, the Board stated that the petition failed to state adequate grounds for appeal. *See* 35 Ill. Adm. Code 108.206.

As noted above, the Board on August 28, 2012, received an amended petition from respondents. The amended petition seeks to cure the identified deficiencies first by including a separate signature of Dale Pugsley on his own behalf. Am. Pet. at 1. Second, the amended petition indicates that respondents “sent copy of petition to Macon Co, Environmental Mgmt. dept. along with copy of respondents” amended petition. *Id.* Third, the amended petition states the following grounds for appeal: “[d]id not cause or allow alleged violations.” *Id.*

The Board accepts the amended 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) (2010). By contesting the administrative citation, respondents may have to pay the hearing costs of the Board and Macon County. *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.

Respondents may withdraw their petition to contest the administrative citation at any time before the Board enters its final decision. If respondents choose to withdraw their petition, they must do so in writing, unless they do so orally at hearing. *See* 35 Ill. Adm. Code 108.208. If respondents withdraw their petition after the hearing starts, the Board will require respondents to pay the hearing costs of the Board and Macon County. *See id.* at 108.500(c).

Macon County has the burden of proof at hearing. *See* 415 ILCS 5/31.1(d)(2) (2010); 35 Ill. Adm. Code 108.400. If the Board finds that respondents violated Sections 21(p)(1), 21(p)(3), and 21(p)(7) of the Act (415 ILCS 5/21(p)(1), 21(p)(3), and 21(p)(7) (2010)), the Board will impose civil penalties on respondents. The civil penalty for violating any provision of Section 21(p) 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) (2010); 35 Ill. Adm. Code 108.500(a). However, if the Board finds that respondents

violation of Section 21(p) of the Act, the penalty amount is set by statute, and the Board does not have the discretion to alter the penalty regardless of what was plead in the complaint. *See* 415 ILCS 5/21(p),42(b)(4-5) (2010).

have “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) (2010); *see also* 35 Ill. Adm. Code 108.500(b).

IT IS SO ORDERED.

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on September 6, 2012, by a vote of 4-0.

A handwritten signature in black ink that reads "John T. Therriault". The signature is written in a cursive style with a long horizontal flourish extending to the right.

John T. Therriault, Assistant Clerk
Illinois Pollution Control Board