

ILLINOIS POLLUTION CONTROL BOARD
September 6, 2012

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	
)	
v.)	AC 13-5
)	(IEPA No. 176-12-AC)
RICKY STRATTON,)	(Administrative Citation)
)	
Respondent.)	

ORDER OF THE BOARD (by T.A. Hollbrook):

On July 19, 2012, the Illinois Environmental Protection Agency (Agency) timely filed an administrative citation against Ricky Stratton (Stratton). *See* 415 ILCS 5/31.1(c) (2010); 35 Ill. Adm. Code 101.300(b), 108.202(c). The administrative citation concerns Stratton’s facility located 2268 West Street, Literberry, Morgan County. The property is commonly known to the Agency as the “Literberry/Stratton” site and is designated with Site Code No. 1378580002. For the reasons below, the Board accepts Stratton’s petition to contest the administrative citation as timely filed, but directs Stratton 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 June 4, 2012, Stratton violated Section 21(p)(1) of the Act (415 ILCS 5/21(p)(1) (2010)) by causing or allowing the open dumping of waste in a manner resulting in litter. The Agency asks the Board to impose on Stratton the statutory \$1,500.00 civil penalty for each alleged violation, for a total civil penalty of \$1,500.00.

As required, the Agency served the administrative citation on Stratton 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). To contest an administrative citation, a respondent must file a petition with the Board no later than 35 days after being served with the administrative citation. *See* 415 ILCS 5/31.1(d) (2010); 35 Ill. Adm. Code 101.300(b), 108.204(b). If a petition is received after the 35-day filing period, but was postmarked on or before the filing deadline, then the filing is timely under the mailbox rule. *See* 35 Ill. Adm. Code 101.300(b)(2) (“mailbox rule”). Here, any petition for review was due by August 23, 2012. On August 28, 2012, the Board received a petition (Pet.) to contest the administrative citation from Stratton. Stratton’s petition is

considered to be filed timely under the mailbox rule because it was postmarked on August 23, 2012. *Id.* The petition is handwritten and indicates that the alleged violation will be cleaned up in two weeks. Pet. at 1.

The Board accepts the petition as timely filed but finds that the petition contains deficiencies that must be remedied before the case can be accepted for hearing. First, 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. Evidence of subsequent cleanup or compliance is not sufficient grounds for appeal. IEPA v. Jack Wright, AC 89-227, slip op. at 7 (Aug. 30, 1990). Thus, the Board finds that Stratton's petition fails to adequately state the grounds for appeal. *See* 35 Ill. Adm. Code 108.206. The Board therefore directs Stratton to include any grounds for appeal according to 35 Ill. Adm. Code 108.206 in an amended petition.

Secondly, the petition did not include the relevant proceeding caption and number, nor was the motion submitted on 8 1/2 x 11 inch paper as required by the Board's procedural rules. 35 Ill. Adm. Code 101.302(g). The petition referenced the Agency's case number, 176-12-AC, but all documents filed with the Board should contain the relevant proceeding caption and number, which in this case is AC 13-5. *See* 35 Ill. Adm. Code 101.302(g). Additionally, the petition was handwritten on notebook paper, but the Board procedural rules require that all documents filed with the Board be on 8 1/2 x 11 inch paper. 35 Ill. Adm. Code 101.302(g). Thus, the Board directs Stratton to include the proper caption and number on the amended petition, and to submit the petition on 8 1/2 x 11 inch paper.

Third, the petition improperly omitted from the petition the Agency's name and the name of the recipient of the administrative citation. 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 Stratton to include the Agency as complainant and Stratton as the administrative citation recipient on the amended petition.

Fourth, the Board finds no evidence that the Agency was served with a copy of the petition. 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 also responsible for providing proof of proper service. 35 Ill. Adm. Code 101.304(d). However, as there is no evidence that Stratton served the Agency with a copy of the petition, the Board directs Stratton to serve a copy of the amended petition upon the Agency, and to file proof of service with the Board.

Finally, the petition does not offer a concise statement of the position or relief sought. 35 Ill. Adm. Code 101.504. The Board directs Stratton to clearly state the relief he is seeking in the amended petition.

Under these circumstances, the Board directs Stratton to file an amended petition by October 8, 2012, 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 necessary caption and number, as well as be submitted on 8 1/2 x 11 inch paper. 35 Ill. Adm. Code 101.302(g). In addition, the amended petition must also include the Agency's name and the name of the recipient of the administrative citation. 35 Ill. Adm. Code 108.204. Stratton must also serve a copy of the amended petition on the Agency and file proof of service with the Board. 35 Ill. Adm. Code 101.304. Additionally, Stratton must clearly state the relief he seeks. 35 Ill. Adm. Code 101.504. If Stratton fails to file an amended petition in accordance with this order, the Board will dismiss the petition and enter a default order against Stratton, finding the violation alleged and imposing the corresponding \$1,500 civil penalty. *IEPA v. 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 Stratton proceeds to contest the administrative citation but does not prevail on the merits of this case, Stratton may have to pay not only the \$1,500 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 T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on September 6, 2012 by a vote of 4-0.



John T. Therriault, Assistant Clerk
Illinois Pollution Control Board