

ILLINOIS POLLUTION CONTROL BOARD
December 6, 2012

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
v.) AC 13-18
) (IEPA No. 225-12-AC)
KENNETH HAILS,) (Administrative Citation)
)
Respondent.)

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

On October 1, 2012, the Illinois Environmental Protection Agency (Agency) timely filed an administrative citation against Kenneth Hails (respondent). *See* 415 ILCS 5/31.1(c) (2010); 35 Ill. Adm. Code 101.300(b), 108.202(c). The administrative citation concerns respondent’s facility located at 14600 East Divide Road, in rural Texico, Jefferson County. The property is commonly known to the Agency as the “Texico/Hails” site and is designated with Site Code No. 0818065009. For the reasons below, the Board accepts respondent’s petition to contest the administrative citation as timely filed, but directs respondent 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 August 15, 2012, respondent violated Sections 21(p)(1), 21(p)(5), 21(p)(6) and 21(p)(7) of the Act (415 ILCS 55/21(p)(1), 21(p)(5), 21(p)(6) and 21(p)(7) (2010)), by causing or allowing the open dumping of waste in a manner resulting in litter, proliferation of disease vectors and deposition of general construction or demolition debris or clean construction or demolition debris, and by causing or allowing standing or flowing liquid discharge from the site. The Agency asks the Board to impose on respondent the statutory \$1,500 civil penalty for each alleged violation, for a total civil penalty of \$6,000.

As required, the Agency served the administrative citation on respondent 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 November 5, 2012. On November 5, 2012, the Board received respondent’s petition for review (Pet.). *See* 415 ILCS 5/31.1(d) (2010); 35 Ill. Adm. Code 101.300(b), 108.204(b). In the petition, respondent accepts the first alleged violation and encloses a check in the amount of

\$1,500. Pet. at 1. Respondent contests the other three alleged violations, stating that the litter in the first alleged violation “will be cleaned up within 1 year,” that “possible flies on a puddle in the farm field after a record drought does not constitute disease vectors,” and that the puddles and leachate described in the third alleged violation “are not from the dump site but are actually from and upon the road right-of-way.” *Id.* Respondent concludes by stating that “the whole area will be corrected as per IEPA Bureau of Land Garrison Gross’ letter “Corrective Action Required” dated 10/15/12.” *Id.*; see 35 Ill. Adm. Code 108.206.

On November 28, 2012, the Board received a copy of a letter dated November 20, 2012, from Agency Assistant Counsel Michelle M. Ryan to the respondent (Agency Ltr.). The Agency first indicated that it was returning to the respondent the check with which he had sought to pay part of the requested penalty. Agency Ltr. at 1. Agency counsel then stated that, “[a]lthough I appreciate your desire to quickly resolve this matter, Illinois EPA does not consider settlement of ACs unless and until the Pollution Control Board (“Board”) accepts a timely filed Petition for Review. If the Board accepts your Petition, you may feel free to contact me at that time to determine whether settlement is a possibility and what terms are acceptable to Illinois EPA. I will note for your information, however, that Illinois EPA will not agree to any settlement until compliance with the law has been achieved and verified at the subject property.” Agency Ltr. 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. 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*, AC89-277, slip op. at 7 (Aug. 30, 1990). The petition fails to state any of these grounds for appeal. The Board therefore directs respondent to file an amended petition addressing each of the alleged violations he wishes to contest with adequate grounds for appeal, which are listed above in this paragraph. See 35 Ill. Adm. Code 108.206.

Second, the petition omitted the relevant proceeding caption and case number. 35 Ill. Adm. Code 101.302(g). All documents filed with the Board should contain the relevant proceeding caption and number, which in this case is AC 13-18. See 35 Ill. Adm. Code 101.302(g). The Board thus directs respondent to include the proper caption and number on the amended petition.

Third, the petition improperly omitted the Agency’s name from the petition. A petition for review must name the recipient of the administrative citation as the respondent and the Agency or Delegated Unit 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 respondent to include the Agency as complainant 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 respondent served the Agency with a copy of the petition, the Board directs respondent 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 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 respondent to clearly state the relief he is seeking in his amended petition.

Under these circumstances, the Board directs respondent to file an amended petition by January 7, 2013, 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 violations alleged in the administrative citation. 35 Ill. Adm. Code 108.206. The amended petition must also provide the necessary caption and case number. 35 Ill. Adm. Code 101.302(g). The amended petition must also include the Agency's name on the petition, 35 Ill. Adm. Code 108.204, and respondent 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, respondent must clearly state the relief he seeks. 35 Ill. Adm. Code 101.504. If respondent fails to file an amended petition in accordance with this order, the Board will dismiss the petition and enter a default order against respondent, finding the violations alleged and imposing the corresponding \$6,000 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 respondent proceeds to contest the administrative citation but does not prevail on the merits of this case, respondent may have to pay not only the \$6,000 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 T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on December 6, 2012 by a vote of 5-0.



John T. Therriault, Assistant Clerk
Illinois Pollution Control Board