

ILLINOIS POLLUTION CONTROL BOARD

December 6, 2012

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	
)	
v.)	
)	AC 13-21
STEVEN B. MEUSER & DEBORAH S.)	(IEPA No. 231-12-AC)
MEUSER and MEUSER CONSTRUCTION &)	(Administrative Citation)
EXCAVATION INC.,)	
)	
Respondents.)	

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

On October 22, 2012, the Illinois Environmental Protection Agency (Agency) timely filed an administrative citation against Steven B. Meuser, Deborah S. Meuser (collectively, Meusers), and Meuser Construction & Excavation Inc. (Meuser Construction) (collectively, respondents). *See* 415 ILCS 5/31.1(c) (2010); 35 Ill. Adm. Code 101.300(b), 108.202(c). The administrative citation concerns Meusers' facility, which Meuser Construction operates, located at an area just southeast of the intersection of Meuser Drive and South Washington Street, Paxton, Ford County. The property is commonly known to the Agency as the "Paxton/Meuser Construction & Excavation Inc." site and is designated with Site Code No. 0530255054. For the reasons below, the Board accepts respondent's 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 September 17, 2012, respondents violated Sections 21(p)(1) and 21(p)(7) of the Act (415 ILCS 5/21(p)(1),(p)(7) (2010)) by causing or allowing the open dumping of waste in a manner resulting in litter and in deposition of general construction or demolition debris or clean construction or demolition debris. The Agency asks the Board to impose the statutory \$1,500.00 civil penalty per violation on respondents, for a total civil penalty of \$3,000.00. 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).

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 31.1(d)(1) (2010); 35 Ill. Adm. Code 101.300(b), 108.204(b), 108.406. Here, any petition to contest the administrative citation was due by November 19, 2012. On November 27, 2012, the Board received a petition for review (Pet.) signed by Steven B. Meuser and providing in its entirety that “I, Steven B. Meuser, individually and on behalf of my wife, Deborah S. Meuser, and as President of Meuser Construction & Excavation hereby petition the Illinois Pollution Control Board for a hearing to contest the Administrative Citation dated October 5, 2012 in this case.” Pet. at 1; *see* 415 ILCS 5/31.1(d) (2010); 35 Ill. Adm. Code 101.400(a). Respondents’ filing also included the appearance of an attorney and a document entitled “Letter of Explanation” signed by Steven B. Meuser (Letter). Under the Board’s procedural rules, the filing is considered timely because the postmark date of November 16, 2012, precedes the filing deadline. *See* 35 Ill. Adm. Code 101.300(b)(2).

In his “Letter of Explanation,” Mr. Meuser indicates that he wishes to address the citation by explaining the circumstances under which it arose “and the steps I have taken after to the fact to remedy the alleged violations.” Letter at 1. The letter first states that, “[w]ith regard to the bricks and concrete that had wood in them, I have since sorted out all of the wood from the pile and taken the wood to be properly disposed of at a landfill. . . . I keep the bricks for use as landscaping around my property as well as for any repairs of my buildings.” Letter at 1. The letter next states that, regarding a load “referred to as litter, I have since separated this load and removed the iron and metal to be salvaged and taken all wood to be properly disposed of at a landfill.” *Id.* He characterized these materials as “a load of items taken from my elderly mother’s home in Fisher. . . . I did not have time to sort it at her house due to the imminent sale of her home.” Letter at 1.

The Board accepts the respondents’ 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. 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 include any reasons for granting a petition according to 35 Ill. Adm. Code 108.206 in an amended petition.

Under these circumstances, the Board directs respondents 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 be signed by their attorney and address the alleged violations with adequate grounds for appeal, which are listed in the preceding paragraph. *See* 35 Ill. Adm. Code 101.400(a) (Appearances), 108.206. 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

\$3,000 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 \$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 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.

A handwritten signature in black ink, reading "John T. Therriault". The signature is fluid and cursive, with a long horizontal stroke at the end.

John T. Therriault, Assistant Clerk
Illinois Pollution Control Board