

ILLINOIS POLLUTION CONTROL BOARD
February 20, 2014

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	
)	
v.)	AC 14-20
)	(IEPA No. 231-13-AC)
FRANK ROOT,)	(Administrative Citation)
)	
Respondent.)	

ORDER OF THE BOARD (by D. Glosser):

On October 15, 2013, the Illinois Environmental Protection Agency (Agency) timely filed an administrative citation against Frank Root (respondent). *See* 415 ILCS 5/31.1(c) (2012); 35 Ill. Adm. Code 101.300(b), 108.202(c). The administrative citation concerns respondent's property located at 13354 Route 16 in Gillespie, Macoupin County. The property is commonly known to the Agency as the "Gillespie/Root Frank" site and is designated with Site Code No. 1178095008. For the reasons below, the Board will allow respondent to file proof that the petition for review was delivered to the Agency.

EXPLANATION OF ADMINISTRATIVE CITATIONS

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 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) (2012); 35 Ill. Adm. Code 108.

BACKGROUND

In this case, the Agency alleges that on August 21, 2013, respondent violated Section 55(k)(1) of the Act (415 ILCS 5/55(k)(1) (2012)) by causing or allowing water to accumulate in used/waste tires. The Agency asks the Board to impose the statutory \$1,500 civil penalty per violation on respondent, for a total civil penalty of \$1,500. As required, the Agency served respondent with the administrative citation on October 21, 2013, which is within "60 days after the date of the observed violation." 415 ILCS 5/31.1(b) (2012); *see also* 35 Ill. Adm. Code 101.300(c), 108.202(b).

Any petition to contest the administrative citation was due by November 25, 2013. On October 25, 2013, respondent timely filed a petition for review. *See* 415 ILCS 5/31.1(d) (2012); 35 Ill. Adm. Code 101.300(b), 108.204(b). On November 7, 2013, the Board accepted the petition but directed respondent to correct deficiencies in the petition. On November 27, 2013,

respondent filed an amended petition stating the alleged violations were a result of uncontrollable circumstances. However, the respondent did not serve the Agency with the amended petition.

On December 5, 2013, the Board accepted the amended petition but directed respondent to serve the Agency with a copy of the amended petition and file proof of that service with the Board by January 6, 2014, the first business day following the 30th day after the date of the order. *See* 35 Ill. Adm. Code 101.304. The Board indicated that failure to serve the Agency and file proof of service by January 6, 2014, would result in the petition being dismissed.

On January 15, 2014, the Board received respondent's second amended petition for review, which was postmarked January 13, 2014. Respondent's filing simply added across the top of the amended petition the words "please let Board know you received thank you". Respondent's filing was not timely and there is no indication that the amended petition was sent to the Agency.

BOARD DISCUSSION ON PETITION REQUIREMENTS

The Board finds that the respondent's second amended petition has not cured the previously identified problem. Specifically, respondent has not provided proof that respondent provided a copy of the amended petition to the Agency (for example, a mail receipt). Proof of receipt by the Agency is required for documents filed with the Board. Documenting service, meaning providing evidence that the Agency received a copy of the amended petition, may be done through U.S. Mail or other mail delivery service, in person, by messenger, or as prescribed in 35 Ill. Adm. Code 101.302(d). *See* 35 Ill. Adm. Code 101.304(c). Because the Agency is a party to this case, a copy of the amended petition, and any future documents submitted to the Board, should also be sent to the following:

Michelle M. Ryan, Assistant Counsel
Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

Respondent must tell the Board, each time he submits a document to the Board, that he provided a copy to the Agency, and respondent must identify what delivery method he used (*e.g.*, U.S. Mail, in person). *See* 35 Ill. Adm. Code 101.304(c); *see also, e.g.*, Proof of Service attached to the Agency's initial filing on October 15, 2013. This "certificate of service" must be filed with the Board. The Board will allow respondent until March 24, 2014, which is the first business day following the 30th day after this order, to provide the Board with the certificate of service on the Agency.

IT IS SO ORDERED.

I, John T. Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on February 20, 2014, 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 stroke at the end.

John T. Therriault, Clerk
Illinois Pollution Control Board