

ILLINOIS POLLUTION CONTROL BOARD
December 18, 2014

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	
)	
v.)	AC 15-17
)	(IEPA No. 367-14-AC)
BERNARD AND CAROLYN CARR and)	(Administrative Citation)
JEFFREY YERK,)	
)	
Respondent.)	

ORDER OF THE BOARD (by D. Glosser):

On October 29, 2014, the Illinois Environmental Protection Agency (Agency) timely filed an administrative citation against Bernard and Carolyn Carr (Carr) and Jeffrey Yerk¹ (Yerk) (collectively, respondents). The administrative citation concerns the Carrs' property located at 3995 North Fisk Road, Astoria, Fulton County. The property is commonly known to the Agency as the "Carr, Bernard & Carolyn" site and is designated with Site Code No. 0570055015. For the reasons below, the Board accepts respondent Jeffrey Yerk's petition to contest the administrative citation, but directs respondent to file an amended petition to cure deficiencies identified in this order.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2014)), 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) (2014); 35 Ill. Adm. Code 108.

In this case, the Agency alleges that on October 1, 2014, respondents violated Sections 21(p)(1), 21(p)(3) and 21(p)(7) of the Act (415 ILCS 5/21(p)(1), (p)(3), and (p)(7) (2014)) by causing or allowing open dumping in manner resulting in litter, open burning and deposition of general construction or demolition debris, or clean construction or demolition debris by causing or allowing open dumping in a manner resulting in litter, deposition of general construction or demolition debris, or clean construction or demolition debris, and accumulation of water in used or waste tires at the Fulton County site. The Agency 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.

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) (2014); *see also* 35 Ill. Adm.

¹ The Board notes that in the administrative citation Mr. Yerk is referred to as Jeffery Yerky; however, in his petition he corrects the spelling to "Yerk". The caption reflects that spelling.

Code 101.300(c), 108.202(b). Any petition to contest the administrative citation was due by December 1, 2014. On December 2, 2014, Jeffrey Yerk filed with the Board a letter dated November 26, 2014. The Board will construe the filing as a timely filed petition (Pet.); however, the petition contains several deficiencies. The Board directs Mr. Yerk to file an amended petition addressing the deficiencies in the petition.

A petition must set forth recognized grounds for why a respondent believes that the administrative citation was improperly issued. *See* Ill. Adm. Code 108.206. Those grounds are provided in Section 108.206 of the Board's rules, and include:

- a) the respondent does not own the property,
- b) the respondent did not cause or allow the alleged violation,
- c) the citation was not timely filed or properly served, or
- d) the alleged violation was the result of uncontrollable circumstances. 35 Ill. Adm. Code 108.206. *See also* IEPA v. Bobby G. Myers and Donald D. Myers, AC 07-30, slip op. at 11 (May 21, 2009).

In the petition, Mr. Yerk does not set forth any recognized grounds for why respondent believes that the administrative citation was improperly issued. Mr. Yerk asserts "we completed the cleanup on October 5, 2014." Pet. at 1.

The Board notes that cleanups performed by a respondent after issuance of an administrative citation are generally neither a defense to the violations alleged nor relevant to determining the civil penalty amount. *See* IEPA v. Jack Wright, AC 89-227, slip op. at 7 (Aug. 30, 1990) ("The Act, by its terms, does not envision a properly issued administrative citation being dismissed or mitigated because a person is cooperative or voluntarily cleans-up the site").


Also, while an individual may represent himself before the Board, a non-attorney cannot represent another person in a Board adjudicatory proceeding, such as an administrative citation action. *See* 35 Ill. Adm. Code 101.400(a). The petition for review was signed by Jeffrey Yerk. Unless Mr. Yerk is an attorney, he cannot represent Bernard and Carolyn Carr. Therefore, an amended petition must be filed that either states Mr. Yerk is an attorney, or that is signed by Mr. Yerk and Bernard and Carolyn Carr. *See* 35 Ill. Adm. Code 108.206. A copy of the amended petition must also be sent to the Agency, and the respondents must provide proof to the Board that they have served the amended petition on the Agency.

If no amended petition is filed with the Board by January 20, 2015 which is the first business day following the 30th day after the date of this order, respondent's petition will be dismissed and a default order will be entered against them, imposing the statutory \$4,500 civil penalty. *See* Ray Logsdon Estate, AC 05-54 (Apr. 21, 2005). If an amended petition is filed pursuant to this order and respondents do not prevail on the merits of the case, respondents will have to pay not only the civil penalty but also any hearing costs of the Board and the Agency. *See* 415 ILCS 5/42(b)(4-5) (2014); 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 website at www.icpb.state.il.us. See 35 Ill. Adm. Code 108.504.

IT IS SO ORDERED.

I, John T. Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on December 18, 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 flourish at the end.

John T. Therriault, Clerk
Illinois Pollution Control Board