

ILLINOIS POLLUTION CONTROL BOARD
March 23, 2017

COUNTY OF JACKSON,)
)
Complainant,)
)
v.) AC 17-11
) (Administrative Citation)
BRUCE REESE and BRYAN BRUCE,)
)
Respondents.)

ORDER OF THE BOARD (by C.K. Zalewski):

On February 16, 2017, Jackson County (complainant) timely filed an administrative citation (AC) against Bruce Reese and Bryan Bruce (respondents). The AC concerns respondents' facility located on Dillinger Road in Carbondale, Jackson County. The property is commonly known to the Illinois Environmental Protection Agency (Agency) as the "Carbondale/Bruce Reese" site and is designated with Site Code # 077 801 5043. For the reasons below, the Board accepts respondents' petition to contest the AC, but directs respondents to file an amended petition to cure deficiencies identified in this order.

Under the Environmental Protection Act (Act), an AC is an expedited enforcement action brought before the Board seeking civil penalties that are fixed by statute. 415 ILCS 5 (2014). 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. 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, Jackson County alleges that on January 11, 2017, respondents violated Sections 21(p)(1) and 21(p)(7), of the Act by causing or allowing open dumping that resulted in both litter and the deposition of general or clean construction or demolition debris at the facility. 415 ILCS 5/21(p)(1), (p)(7) (2014). Jackson County asks the Board to impose the statutory \$1,500 civil penalty for each alleged violation, for a total civil penalty of \$3,000.

As required, Jackson County served the AC on respondents within "60 days after the date of the observed violation." 415 ILCS 5/31.1(b) (2014); *see also* 35 Ill. Adm. Code 101.300(c), 108.202(b). Any petition to contest the AC was due March 30, 2017. On March 13, 2017, Bruce Reese filed a letter on behalf of himself and Bryan Bruce, which the Board construes as a petition to contest the AC. 415 ILCS 5/31.1(d) (2014); 35 Ill. Adm. Code 101.300(b), 108.204(b). Although the Board accepts the petition as timely filed, the Board finds that the petition is deficient.

A petition must set forth recognized grounds for why a respondent believes that the AC was improperly issued. 35 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).

Respondents' petition to contest does not include a statement that sets forth reasons why they believe that the AC was improperly issued. Pet. at 1; 35 Ill. Adm. Code 108.206. The Board therefore directs respondents to include—in an amended petition to be filed with the Board—their reasons for contesting the AC, according to 35 Ill. Adm. Code 108.206.

In addition, while an individual may represent himself or herself before the Board, a non-attorney cannot represent another person in a Board adjudicatory proceeding, such as an AC. 35 Ill. Adm. Code 101.400(a). The petition to contest was filed by Bruce Reese on behalf of himself and Bryan Bruce. Unless Bruce Reese is an attorney, he cannot represent Bryan Bruce. Therefore, an amended petition must indicate that Bruce Reese is an attorney (representing himself and Bryan Bruce), or must be signed by both respondents (each representing himself), or must be filed through an attorney (representing both respondents). Alternatively, each respondent may file a separate amended petition on his own behalf or through an attorney. In addition to filing any amended petition with the Board, respondents must mail a copy of any amended petition to Jackson County and file proof with the Board that a copy of the amended petition was mailed to Jackson County. 35 Ill. Adm. Code 101.304.

Deficiencies of respondents' petition must be remedied before the case can be accepted for hearing. The Board therefore directs that respondents file an amended petition with the Board curing the deficiencies, including specifically stating one or more recognized grounds on which they contest the AC. *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 and amended petition to cure the deficiency).

If no amended petition is filed with the Board by April 24, 2017, which is the first business day following the 30th day after the date of this order, respondents' petition will be dismissed and a default order will be entered against both Bruce Reese and Bryan Bruce, imposing the statutory \$1,500 civil penalty for each violation. *See* IEPA v. Ray Logsdon Estate, AC 05-54 (Apr. 21, 2005). If an amended petition is filed pursuant to this order, accepted for hearing in a subsequent Board 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 Jackson County. 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. 35 Ill. Adm. Code 108.504.

IT IS SO ORDERED.

I, Don A. Brown, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on March 23, 2017, by a vote of 5-0.

A handwritten signature in black ink that reads "Don A. Brown". The signature is written in a cursive style with a large, circular initial "D".

Don A. Brown, Assistant Clerk
Illinois Pollution Control Board