

ILLINOIS POLLUTION CONTROL BOARD
March 5, 2009

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
v.) AC 09-35
) (IEPA No. 13-09-AC)
WILLIAM AND PATRICIA HAJEK,) (Administrative Citation)
)
Respondents.)

ORDER OF THE BOARD (by G.T.Girard):

On February 13, 2009, the Illinois Environmental Protection Agency (Agency) timely filed an administrative citation against William and Patricia Hajek (respondents). *See* 415 ILCS 5/31.1(c) (2006); 35 Ill. Adm. Code 101.300(b), 108.202(c). The administrative citation concerns respondents' residential property located at 1683 McAllister Road, Waterman, DeKalb County. For the reasons below, the Board accepts respondent William Hajek's petition to contest the administrative citation as timely filed, but directs Patricia Hajek to file an amended petition to cure the deficiencies listed herein.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2006)), 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 at sanitary landfills or unpermitted open dumps. *See* 415 ILCS 5/3.305, 3.445, 21(o), (p), 31.1(c), 42(b)(4), (4-5) (2006); 35 Ill. Adm. Code 108.

In this case, the Agency alleges that respondents violated Sections 21(p)(1) and (p)(7) of the Act (415 ILCS 5/21(p)(1) and (p)(7) (2006)) by causing or allowing the open dumping of waste in a manner resulting in litter, and in a manner resulting in the deposition of clean or general construction or demolition debris at respondents' DeKalb County site. The Agency asks the Board to impose a \$1,500.00 civil penalty on respondents for each violation, for a total penalty of \$3,000.00.

As required, the Agency served the administrative citation on William and Patricia Hajek within "60 days after the date of the observed violation." 415 ILCS 5/31.1(b) (2006); *see also* 35 Ill. Adm. Code 101.300(c), 108.202(b). A petition to contest the administrative citation is due by March 25, 2009. On February 24, 2009, William Hajek timely filed a petition to contest the administrative citation (Pet.). Respondent Mr. Hajek denies the allegations, stating that not all of the materials on site are waste (Pet. at 2-4.), and that the "severity of the winter storms" has prevented him from removing those which are waste. *Id.*; *see* 35 Ill. Adm. Code 108.206.

The Board finds that the petition contains deficiencies that must be remedied before the case can be accepted for hearing with respect to respondent Patricia Hajek. Though an individual may represent himself or herself, 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 was brought on behalf of and signed by William Hajek. Pet. at 5. The petition fails to identify William Hajek as an attorney. If Patricia Hajek would like to contest the administrative citation, she must do so by filing an amended petition on her own behalf.

The Board therefore directs that Patricia Hajek file an amended petition for review. *See, e.g. IEPA v. Ray Logsdon Estate*, AC 05-54 (Mar. 3, 2005) (accepting as timely filed a petition that did not indicate whether it was filed by an attorney but requiring an amended petition to cure the deficiency). If Patricia Hajek fails to file an amended petition in a timely manner, the Board will enter a default order against the remaining respondents, imposing the \$3,000.00 penalty. *See 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 respondents proceed to contest the administrative citation but do not prevail on the merits of the case, respondents will have to pay not only the \$3,000.00 penalty but also any hearing costs of the Board and the Agency. *See* 415 ILCS 5/42(b)(4-5) (2006); 35 Ill. Adm. Code 108.500 (2006). A schedule of the Board's hearing costs is available from the Clerk of the Board and on the Board's website at www.ipcb.state.il.us. *See* 35 Ill. Adm. Code 108.504.

IT IS SO ORDERED.

I, John Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on March 5, 2009, by a vote of 5-0.



John Therriault, Assistant Clerk
Illinois Pollution Control Board