

ILLINOIS POLLUTION CONTROL BOARD

August 4, 2010

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	
)	
v.)	AC 11-32
)	(IEPA No. 150-11-AC)
BRANDON DEHART and ROBERT)	(Administrative Citation)
EVANS,)	
)	
Respondents.)	

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

On June 17, 2011, the Board received an administrative citation from the Illinois Environmental Protection Agency (Agency) against Brandon DeHart and Robert Evans (collectively, respondents). See 415 ILCS 5/31.1(c) (2010); 35 Ill. Adm. Code 101.300(b), 108.202(c). The case concerns a facility located at 750 Knapp Lane, Pittsfield, Pike County. The property is commonly known to the Agency as the “Pittsfield Township/DeHart” site and is designated with Site Code No. 1498190013.

On July 19, 2011, Mr. Dehart filed a petition for review with the Board. This order accepts Mr. DeHart’s petition for review as timely filed, however Mr. DeHart’s petition is deficient. Therefore, the Board accepts the petitions as timely filed and directs that amended petitions be filed with the Board by September 6, 2011, to cure the deficiencies identified in this order. Additionally, Mr. Evans failed to submit a petition for review with the Board within the statutory period. See 415 ILCS 5/31.1(d)(1) (2010); 35 Ill. Adm. Code 108.204(b). The Board, therefore, finds that Mr. Evans has defaulted but withholds issuing its final order until the Board makes a final determination regarding Mr. DeHart. Before turning to these matters, the Board provides background on administrative citations under the Environmental Protection Act (Act) (415 ILCS 5 (2010)) and the citation filed against the Mr. DeHart and Mr. Evans.

LEGAL BACKGROUND

Under the 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 at sanitary landfills or unpermitted open dumps. See 415 ILCS 5/3.305, 3.445, 21(o), 21(p), 31.1(c), 42(b)(4), (4-5) (2010); 35 Ill. Adm. Code 108.

The Agency or delegated local authority must serve the administrative citation on the respondent within “60 days after the date of the observed violation.” 415 ILCS 5/31.1(b)

(2010)); *see also* 35 Ill. Adm. Code 108.202(b). The Agency or delegated local authority must also file a copy of the administrative citation with the Board no later than ten days after serving the respondent. *See* 415 ILCS 5/31.1(c) (2010).

To contest the administrative citation, the respondent must file a petition with the Board no later than 35 days after being served with the administrative citation. If the respondent fails to do so, the Board must find that the respondent committed the violations alleged and impose the corresponding civil penalty. *See* 415 ILCS 31.1(d) (1) (2010); 35 Ill. Adm. Code 108.204(b), 108.406.

If the respondent timely contests the administrative citation, but the complainant proves the alleged violations at hearing, the respondent will be held liable not only for the civil penalty but also for the hearing costs of the Board and the complainant. *See* 415 ILCS 5/42(b) (4-5) (2010); 35 Ill. Adm. Code 108.500. However, if the Board finds that the respondent “has shown that the violation resulted from uncontrollable circumstances, the Board shall adopt a final order which makes no finding of violation and which imposes no penalty.” 415 ILCS 5/31.1(d) (2) (2010); *see also* 35 Ill. Adm. Code 108.500(b).

PROCEDURAL BACKGROUND

On June 17, 2011, the Agency timely filed an administrative citation against the respondents. *See* 415 ILCS 5/31.1(c) (2008); 35 Ill. Adm. Code 108.202(c). The Agency alleges that respondents violated Sections 21(p) (1), 21(p)(3), and 21(p)(7) of the Act (415 ILCS 5/21(p) (1), 21(p)(3), and 21(p)(7) (2010)). The Agency alleges that respondents violated these provisions by causing or allowing the open dumping of waste in a manner resulting in litter, in manner resulting in open burning, and in manner resulting in the deposition of general construction or demolition debris at 750 Knapp Lane, Pittsfield, Pike County. The Agency states that the inspection on which the citation is based occurred on May 6, 2011.

The civil penalty for violating any provision of subsection (p) of Section 21 is \$1,500 for each violation, except that the penalty amount is \$3,000 for each violation that is the person’s second or subsequent adjudicated violation of that provision. *See* 415 ILCS 5/42(b) (4-5) (2008); 35 Ill. Adm. Code 108.500(a). Because this is the respondents’ first adjudicated violations of Sections 21(p)(1), 21(p)(3), or 21(p)(7) of the Act, 415 ILCS 5/ 21(p)(1), 21(p)(3) and 21(p)(7) (2010), the respondents are subject to a civil penalty of \$1,500 for each violation of Sections 21(p)(1), 21(p)(3), and 21(p)(7), for a total civil penalty of \$4,500.

On June 16, 2011, the Agency served Mr. Evans with the administrative citation related to the May 6, 2011 site inspection. If Mr. Evans were to contest the administrative citation, a petition for review was due by July 21, 2011. As of July 21, 2011, Mr. Evans failed to file a petition for review. On June 25, 2011, the Agency served Mr. DeHart with the administrative citation. And on June 17, 2011, Mr. Dehart filed a petition for review (Pet.) requesting a hearing in this matter. Pet. at 1; *see* 35 Ill. Adm. Code 108.206.

DEFAULT JUDGMENT AGAINST ROBERT EVANS

As required, the Agency served the administrative citation on the respondents within “60 days after the date of the observed violation.” 415 ILCS 5/31.1(b) (2010); *see also* 35 Ill. Adm. Code 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. On June 22, 2011, the Agency filed proof that it had timely served the administrative citation on Mr. Evans on June 16, 2011. Mr. Evans petition for review would have been due on or before July 21, 2011.

If a respondent fails to file a timely petition for review, the Board must find that the respondent committed the violations alleged and impose the corresponding statutory civil penalty. 415 ILCS 31.1(d) (1) (2010); 35 Ill. Adm. Code 108.204(b), 108.406. Here, Mr. Evans failed to timely file a petition. Accordingly, the Board finds that Mr. Evans violated Sections 21(p)(1), 21(p)(3), and 21(p)(7) of the Act (415 ILCS 5/21(p)(1), 21(p)(3), and 21(p)(7) (2010)). However, the Board will withhold a final order concerning Mr. Evans until the Board reaches a final determination regarding Mr. DeHart. *See Illinois Environmental Protection Agency v. Ray Logsdon Estate, Logsdon Sand and Gravel, and M.K. O’Hara Construction, Inc.*, AC 05-54, slip op. at 3 (Apr. 21, 2005).

TIMELINESS OF BRANDON DEHART’S PETITION

Under the Act, to contest an administrative citation, the respondent must file a petition with the Board within “35 days from the date of service” of the citation. 415 ILCS 5/31.1(d)(1) (2010). “If a respondent fails to file within the statutory 35-day period, the Board lacks jurisdiction to hear the petition.” *IEPA v. Reynolds Service Co.*, AC 09-14, slip op. at 4 (Dec. 4, 2008). The Agency served Mr. DeHart with the administrative citation on June 25, 2011, and Mr. DeHart could then file a petition for review with the Board by August 1, 2011. Mr. DeHart filed a petition with the Board on July 19, 2011. Therefore, the Board finds that Mr. DeHart has timely filed his petition for review.

ADEQUACY OF BRANDON DEHART’S PETITION

The Board accepts Mr. DeHart’s petition for review as timely filed; however, the Board finds the petition is deficient. Before discussing the adequacy of Mr. DeHart’s petition, the Board will briefly summarize Mr. DeHart’s petition. According to Mr. DeHart’s petition, Mr. DeHart alleges that he has “cleaned up the mess at 750 Knapp Ln., Pittsfield, IL 62363.” Pet. at 1. Additionally, Mr. DeHart’s petition does not indicate the Agency as the complainant for this administrative citation.

Mr. DeHart’s petition for review does not include a statement that sets forth reasons why he believes that the administrative citation was improperly issued. Pet. 2 at 1; *See* 35 Ill. Adm. Code 108.206(b). Voluntary cleanups performed by a respondent are generally neither a defense to the violations alleged nor relevant to determining the civil penalty amount. *See IEPA v. Jack Wright*, AC 89-277, 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”). The Board therefore directs Mr. Heck to include any reasons for granting a petition according to 35 Ill. Adm. Code 108.206(b) in an amended petition.

The Board also finds that Mr. DeHart improperly omitted the Agency’s name on the petitions. A petition for review must name the recipient of the administrative citation as the respondent and the Agency as the complainant in accordance with Section 31.1(d)(2) of the Act (415 ILCS 5/31(d)(2) (2010)). *See* 35 Ill. Adm. Code 108.204(a). If Mr. DeHart decides to amend the petition, he must include his names as the respondent and the Agency’s name as the complainant.

The Board directs that Mr. DeHart file an amended petition with the Board that includes the Agency as the complainant and himself as the respondent and that sets forth any reasons for granting the petition. *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). In addition to filing an amended petition with the Board, Mr. DeHart or his attorney must serve a copy of the amended petition on the Agency and file proof of that service with the Board. *See* 35 Ill. Adm. Code 101.304.

If the amended petition is not filed with the Board by September 6, 2011, which is the first business day following the 30th day after the date of this order, the 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) (finding respondent defaulted by not filing amended petition as directed to cure deficiency in original petition). If an amended petition is filed pursuant to this order and the respondents do not prevail on the merits of the case, the respondent 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) (2010); 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 Web site at www.ipcb.state.il.us. *See* 35 Ill. Adm. Code 108.504.

CONCLUSION

In today’s order, the Board accepts as timely a petition for review filed by Brandon DeHart. However, the Board does not accept Mr. DeHart’s petition for hearing, because the petition is deficient. Accordingly, the Board directs that Mr. DeHart, either himself or through an attorney, file with the Board an amended petition by September 6, 2011, to cure the deficiencies identified above. Also in today’s order, the Board finds that Robert Evans has defaulted by failing to file a petition to contest the administrative citation. Accordingly, the Board finds that Mr. Evans violated the Act as alleged. The Board withholds issuing its final order regarding Mr. Evans until the Board makes its final decision regarding Mr. DeHart.

IT IS SO ORDERED

I, John Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on August 4, 2011, by a vote of 5-0.

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 Therriault, Assistant Clerk
Illinois Pollution Control Board