

ILLINOIS POLLUTION CONTROL BOARD
January 5, 2012

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
v.) AC 12-14
) (IEPA No. 340-11-AC)
HAROLD DEAN FOSTER,) (Administrative Citation)
)
Respondent.)

OPINION AND ORDER OF THE BOARD (by T.A. Holbrook):

On November 14, 2011, the Illinois Environmental Protection Agency (Agency) timely filed an administrative citation against Harold Dean Foster (respondent). *See* 415 ILCS 5/31.1(c) (2010); 35 Ill. Adm. Code 101.300(b), 108.202(c). The administrative citation concerns respondent's facility located at 42998 County Highway 8, Time, Pike County. The property is commonly known to the Agency as the "Time/Foster" site and is designated with Site Code No. 1490850001. For the reasons below, the Board accepts respondent's petition to contest the administrative citation but directs respondent to file an amended petition to cure the deficiency noted in this order.

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, 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) (2010); 35 Ill. Adm. Code 108.

In this case, the Agency alleges that, on September 23, 2011, respondent violated Sections 21(p)(1), (p)(3), and (p)(7) of the Act (415 ILCS 5/21(p)(1), (p)(3), (p)(7) (2010)) by causing or allowing the open dumping of waste in a manner resulting in litter, open burning, and the deposition of general or clean construction or demolition debris. The Agency asks the Board to impose the statutory \$1,500 civil penalty per violation on respondent, for a total civil penalty of \$4,500. As required, the Agency served the administrative citation on respondent within "60 days after the date of the observed violation." 415 ILCS 5/31.1(b) (2010); *see also* 35 Ill. Adm. Code 101.300(c), 108.202(b).

As required, the Agency served the administrative citation on respondent within "60 days after the date of the observed violation." 415 ILCS 5/31.1(b) (2010); *see also* 35 Ill. Adm. Code 101.300(c), 108.202(b). Any petition to contest the citation was due by December 14, 2011. On December 20, 2011, respondent timely filed a petition (Pet.). *See* 415 ILCS 5/31.1(d) (2010); 35 Ill. Adm. Code 101.300(b), 108.204(b). The petition states in pertinent part that respondent is "continuing to clean my property up and will continue to do such." Pet. at 1.

The Board accepts the petition as timely but finds that the petition contains a deficiency that must be remedied before the case can be accepted for hearing. The petition fails to state adequate grounds for appeal, which must include allegations that, the recipient of the citation: 1) does not own the property; 2) did not cause or allow the alleged violations; 3) was not properly served; or 4) was unable to prevent the violation due to uncontrollable circumstances. *See* 35 Ill. Adm. Code 108.206. Evidence of subsequent cleanup or compliance is not sufficient grounds for appeal. IEPA v. Jack Wright, AC89-227, slip op. at 7 (Aug. 30, 1990).

Under these circumstances, the Board directs respondent to file an amended petition by Monday, February 6, 2012, which is the first business day following the 30th day after the date of this order. *See* County of Jackson v. Dan Kimmel, AC06-21 (Feb. 16, 2006) (accepting as timely petition that failed to include grounds for appeal and requiring amended petition to cure deficiency). The amended petition must state one or more acceptable grounds for contesting the administrative citation. 35 Ill. Adm. Code 108.206. Respondent must serve the amended petition on the Agency and file proof of service with the Board. 35 Ill. Adm. Code 101.304. If respondent fails to file an amended petition in accordance with this order, the Board will dismiss the petition and enter a default order against respondent, finding the violations alleged and imposing the statutory penalty of \$4,500. IEPA v. Logsdon Sand and Gravel and M. K. O'Hara Construction, Inc., AC5-54 (Apr. 21, 2005) (finding respondent defaulted by not filing amended petition as directed to cure deficiency in original petition).

If respondent proceeds to contest the administrative citation but does not prevail on the merits of this case, respondent may have to pay not only the statutory penalty but also any hearing costs of the Board and the Agency. A schedule of the Board's hearing costs is available from the Clerk of the Board and on the Board's Web site as www.ipcb.state.il.us. *See* 35 Ill. Adm. Code 108.504

IT IS SO ORDERED.

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on January 5, 2012, by a vote of 5-0.



John T. Therriault, Assistant Clerk
Illinois Pollution Control Board