

ILLINOIS POLLUTION CONTROL BOARD
January 5, 2012

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	
)	
v.)	AC 12-17
)	(IEPA No. 355-11-AC)
LOVES PARK AUTO PARTS COMPANY,)	(Administrative Citation)
)	
Respondent.)	

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

On November 23, 2011, the Illinois Environmental Protection Agency (Agency) timely filed an administrative citation against Loves Park Auto Parts Company (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 9902 North 20th Street, Rockford, Winnebago County. The property is commonly known to the Agency as the “Rockford/Loves Park Auto Parts” site and is designated with Site Code No. 2010305330. For the reasons below, the Board accepts respondent’s petition to contest the administrative citation but directs respondent to file an amended petition curing the deficiency identified in this order.

Under the Environmental Protection Act (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. *See* 415 ILCS 5/21(o), (p), 22.51, 22.51a, 31.1(c), 42(b)(4), (4-5) (2010), 55(k); 35 Ill. Adm. Code 108.

In this case, the Agency alleges that, on October 4, 2011, respondent violated Sections 55(k)(1) of the Act (415 ILCS 5/55(k)(1) (2010)) by causing or allowing the open dumping of waste in a manner resulting at this site in used tires not altered, covered, or otherwise prevented from accumulating water. The Agency asks the Board to impose the statutory \$1,500 civil penalty per violation on respondent, for a total civil penalty of \$1,500.

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). Any petition to contest the citation was due by December 27, 2011. On December 30, 2011, respondent timely filed a petition for review (Pet.). *See* 415 ILCS 5/31.1(d) (2010); 35 Ill. Adm. Code 101.300(b)(2), 108.204(b). The petition addresses a September 20, 2011 inspection of respondent’s site by stating that the inspector left the site without informing respondent of any violation and that the respondent never received a written or verbal report. Pet. at 1. The petition also addresses an October 4, 2011 inspection of respondent’s site by

stating that the inspector left the site without acknowledging or discussing any violations and that the respondent never received a written or verbal report. *Id.* The petition states that respondent contacted the inspector and the Agency's counsel "to discuss the citation and ask for dismissal based on the fact [it had received] no verbal or written report for either the September 20, 2011 or the October 4, 2011 inspections." *Id.* The petition also states that, after clarifying the violation with the inspector, the respondent "resolved the issue by emptying all tires of water and placing tarps over all tires to prevent the accumulation of water." *Id.* at 2.

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 \$1,500. *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