

ILLINOIS POLLUTION CONTROL BOARD
July 12, 2012

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
v.) AC 12-53
) (IEPA No. 123-12-AC)
THOMAS E. PORTER, BEVERLY J. BIBLE,) (Administrative Citation)
and TODD & TABATHA BOOTEN, d/b/a)
C&T RECYCLING,)
)
Respondents.)

ORDER OF THE BOARD (by T.E. Johnson):

On May 17, 2012, the Illinois Environmental Protection Agency (Agency) timely filed an administrative citation against Thomas E. Porter (Porter) and Beverly J. Bible (Bible), as well as Todd and Tabatha Booten, doing business as C & T Recycling (the Bootens) (collectively, respondents).¹ See 415 ILCS 5/31.1(c) (2010); 35 Ill. Adm. Code 101.300(b), 108.202(c). The administrative citation concerns a facility owned by Porter and Bible, operated by the Bootens, and located at 3302 Water Tower Road in Marion, Williamson County. The property is commonly known to the Agency as the “Marion/C&T-Porter-Bible” site and is designated with Site Code No. 1990555206. For the reasons below, the Board accepts for hearing the petition of Porter and Bible and the petition of the Bootens to contest the administrative citation.

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), 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 March 22, 2012, Porter, Bible, and the Bootens violated Sections 21(p)(1) and (p)(3) of the Act (415 ILCS 5/21(p)(1), (p)(3) (2010)) by causing or allowing the open dumping of waste in a manner resulting in litter and open burning at the Williamson County site. The Agency asks the Board to impose on Porter, Bible, and the Bootens the statutory \$1,500 civil penalty for each alleged violation, for a total civil penalty of \$3,000. 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 101.300(c), 108.202(b). Any petition to contest the administrative citation was due

¹ The caption of this case has been amended to show the correct spelling of “Tabatha” Booten, as reflected in the Bootens’ petition.

by June 25, 2012. On June 12, 2012, Porter and Bible timely filed a petition through an attorney. On June 25, 2012, the Bootens timely filed a *pro se* petition, signed by both Todd Booten and Tabatha Booten. *See* 415 ILCS 5/31.1(d) (2010); 35 Ill. Adm. Code 101.300(b), 108.204(b). The Bootens' petition indicates that neither Todd Booten nor Tabatha Booten is an attorney. However, an individual may represent himself in an adjudicatory proceeding before the Board even though he is not an attorney. *See* 35 Ill. Adm. Code 101.400(a)(1) ("Individuals may appear on their own behalf or through an attorney-at-law"). Further, an individual who is not an attorney may represent his unincorporated sole proprietorship, which C & T Recycling appears to be. *See* Mahanbir Dhillon d/b/a Express Food & Gas v. IEPA, PCB 02-9, slip op. at 1 (Aug. 23, 2001)) (non-attorney may represent his unincorporated sole proprietorship); *but see* 35 Ill. Adm. Code 101.400(a)(2) ("any person other than individuals [*e.g.*, corporation, partnership] must appear through an attorney-at-law").

In their petition, Porter and Bible plead that they did not cause or allow the alleged violations, and that the alleged violations resulted from uncontrollable circumstances. The Bootens plead that they did not cause open burning, allow opening dumping, or have a waste disposal operation, and that any violation resulted from uncontrollable circumstances. The Board accepts both petitions and directs the hearing officer to proceed expeditiously to hearing. The hearing officer will give the parties at least 21 days written notice of the hearing. *See* 35 Ill. Adm. Code 108.300; 415 ILCS 5/31.1(d)(2) (2010). By contesting the administrative citation, Porter, Bible, and the Bootens may have to pay the 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.

Porter and Bible and the Bootens may withdraw their respective petitions to contest the administrative citation at any time before the Board enters its final decision. If either Porter and Bible or the Bootens choose to withdraw their petition, they must do so in writing, unless they do so orally at hearing. *See* 35 Ill. Adm. Code 108.208. If Porter and Bible and the Bootens withdraw their respective petitions after the hearing starts, the Board will require the respondents to pay the hearing costs of the Board and the Agency. *See id.* at 108.500(c).

The Agency has the burden of proof at hearing. *See* 415 ILCS 5/31.1(d)(2) (2010); 35 Ill. Adm. Code 108.400. If the Board finds that Porter, Bible, and the Bootens violated Section 21(p)(1) or (p)(3) of the Act (415 ILCS 5/21(p)(1), (p)(3) (2010)), the Board will impose civil penalties on the respondents. The civil penalty for violating any provision of Section 21(p) 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) (2010); 35 Ill. Adm. Code 108.500(a). However, if the Board finds that the respondents have "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).

IT IS SO ORDERED.

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on July 12, 2012, 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 stroke at the end.

John T. Therriault, Assistant Clerk
Illinois Pollution Control Board