

ILLINOIS POLLUTION CONTROL BOARD

August 9, 2012

MACON COUNTY ENVIRONMENTAL)
MANAGEMENT DEPARTMENT,)
)
Complainant,)
)
v.) AC 12-59
) (MCEMD No. 1158015021: 2012-01)
DALE PUGSLEY and TRACY KATER,) (Administrative Citation)
)
Respondents.)

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

On June 20, 2012, the Macon County Environmental Management Department (Macon County) timely filed an administrative citation against Dale Pugsley (Pugsley) and Tracy Kater (Kater). *See* 415 ILCS 5/31.1(c) (2010); 35 Ill. Adm. Code 101.300(b), 108.202(c). The administrative citation concerns Pugsley and Kater's property located 5534 Pleasant View Road, Macon County. The property is designated with Parcel No. 02-15-08-400-011, with an alternate parcel designation of 15-08-400-011. For the reasons below, the Board accepts Pugsley and Kater's petition to contest the administrative citation, but directs them to file an amended petition to cure certain deficiencies 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 Illinois Environmental Protection Agency (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, Macon County alleges that on June 12, 2012, Pugsley and Kater 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)) by causing or allowing the open dumping of waste resulting in litter, open burning, and the deposition of general construction or demolition debris at the Macon County site. Macon County asks the Board to impose on Pugsley and Kater the statutory \$1,500 civil penalty for each alleged violation, for a total civil penalty of \$4,500.¹

¹ The complaint contains a scrivener's error, erroneously multiplying \$1,500 per violation by three violations to arrive at a total civil penalty of \$1,500. Complaint at 2. The complaint later refers to the correct total penalty amount of \$4,500. Complaint at 3. It should be noted that, if the Board finds a violation of Section 21(p) of the Act, the penalty amount is set by statute, and the Board does not have the discretion to alter the penalty regardless of what was pled in the complaint. *See* 415 ILCS 5/21(p),42(b)(4-5) (2010).

As required, Macon County served the administrative citation on Pugsley and Kater 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). 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. *See* 415 ILCS 5/31.1(d) (2010); 35 Ill. Adm. Code 101.300(b), 108.204(b). If a petition is received after the 35-day filing period, but was postmarked on or before the filing deadline, then the filing is timely under the mailbox rule. *See* 35 Ill. Adm. Code 101.300(b)(2) (“mailbox rule”). Here, any petition for review was due by August 3, 2012. On August 6, 2012, the Board received a petition to contest the administrative citation from Pugsley and Kater (Pet.). Pugsley and Kater’s petition is considered to be filed timely under the mailbox rule because it was postmarked on August 1, 2012, on or before the filing date. *Id.*

The petition addresses the alleged violation of Section 21(p)(1) by stating that “[p]rofessional commercial grade dumpster set in in May 2012.” Pet. at 1. Next, the petition addresses the alleged violation of Section 21(p)(3) by stating that “[the b]urning to the best of our knowledge is being set by adjacent neighbor Allan and Julie Weaver.” *Id.* Finally, the petition addresses the alleged violation of Section 21(p)(7) by stating that “[d]rywall and boards were laying on ground job was not completely finished. We hung onto mat’l until job was complete.” *Id.* at 1-2.

The Board accepts the petition as timely but finds that the petition contains deficiencies that must be remedied before the case can be accepted for hearing. First, Kater has signed the petition on her own behalf and as “Tracy Kater for Dale Pugsley.” Pet. at 2. Under the Board’s procedural rules, “[i]ndividuals may appear on their own behalf or through an attorney-at-law licensed and registered to practice law.” 35 Ill. Adm. Code 101.400(a)(1). While Kater may represent herself in this matter, she is not able to represent Pugsley unless she is a registered attorney, which is not shown in the record. Pugsley may also represent himself in this matter, and he may be represented by a registered attorney. *Id.*

Second, there is no indication that Pugsley and Kater served a copy of the petition upon Macon County Environmental Management Department. Under the Board’s procedural rules, Pugsley and Kater were required to serve a copy of the petition upon the Macon County Environmental Management Department and file proof of that service with the Board. *See* 35 Ill. Adm. Code 101.304.

Finally, contrary to the Board’s procedural rules, the petition fails to state adequate grounds for appeal. *See* 35 Ill. Adm. Code 108.206. The acceptable grounds for contesting an administrative citation are as follows: 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, AC 89-227, slip op. at 7 (Aug. 30, 1990).

Under these circumstances, the Board directs Pugsley and Kater to file an amended petition addressing the deficiencies above, accompanied by a certificate of service. The certificate of service must document that Pugsley and Kater served a copy of the amended

petition upon Macon County Environmental Management Department. The amended petition must state acceptable grounds for contesting the alleged violations. If Pugsley and Kater fail to file these documents with the Board by September 10, 2012, which is the first business day following the 30th day after the date of this order, the Board will dismiss the petition and enter a default order against Pugsley and Kater imposing the \$4,500.00 penalty. *See* 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).

If Pugsley and Kater proceed to contest the administrative citation, but do not prevail on the merits of the case, Pugsley and Kater will have to pay the \$4,500.00 penalty, and also any hearing costs of the Board and Macon County. *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 website at 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 August 9, 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