

ILLINOIS POLLUTION CONTROL BOARD

August 9, 2012

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	
)	
v.)	AC 13-3
)	(IEPA No. 173-12-AC)
E.G. TABOR and ULTIMATE RECYCLING,)	(Administrative Citation)
INC.,)	
)	
Respondents.)	

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

On July 19, 2012, the Illinois Environmental Protection Agency (Agency) timely filed an administrative citation against E. G. Tabor (Tabor) and Ultimate Recycling, Inc. (Ultimate Recycling). See 415 ILCS 5/31.1(c) (2010); 35 Ill. Adm. Code 101.300(b), 108.202(c). The administrative citation concerns a recycling facility property owned by Tabor and operated by Ultimate Recycling at 3600 S.W. Adams, Peoria, Peoria County. The property is commonly known to the Agency as the “Ultimate Recycling, Inc.” site and is designated with Site Code No. 1430655817. For the reasons below, the Board accepts Tabor’s petition to contest the administrative citation as timely filed but directs Tabor to file an amended petition to cure deficiencies 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), 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 June 5, 2012, Tabor and Ultimate Recycling violated Sections 21(p)(1), (p)(3), (p)(7), and 55(k)(1) of the Act (415 ILCS 5/21(p)(1), (p)(3), (p)(7) and 55(k)(1) (2010)) by causing or allowing the open dumping of waste in a manner resulting in litter, open burning, and deposition of general construction or demolition debris or clean construction or demolition debris, and by causing or allowing water to accumulate in used or waste tires at the Peoria County site. The Agency asks the Board to impose on Tabor and Ultimate Recycling the statutory \$1,500.00 civil penalty for each alleged violation, for a total civil penalty of \$6,000.00.

As required, the Agency served the administrative citation on Tabor and Ultimate Recycling 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 by August 22, 2012. On July 31, 2012, Tabor timely filed a letter, which the Board construes as a petition for review (Pet.). *See* 415 ILCS 5/31.1(d) (2010); 35 Ill. Adm. Code 101.300(b), 108.204(b). The handwritten petition appears to allege that he has “nothing to do with this business,” and that what is shown in photos attached to the citations is “not of my doing.” Pet. at 1. *See* 35 Ill. Adm. Code 108.206.

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, 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 timely or properly served, or 4) was unable to prevent the violation due to uncontrollable circumstances. 35 Ill. Adm. Code 108.206. Thus, the Board finds that Tabor’s petition fails to adequately state the grounds for appeal. *See* 35 Ill. Adm. Code 108.206. The Board therefore directs Tabor to file an amended petition including adequate grounds for appeal. 35 Ill. Adm. Code 108.206.

Secondly, the petition omitted the relevant proceeding caption and number, and the motion was not submitted on 8 1/2 x 11 inch paper as required by the Board’s procedural rules. 35 Ill. Adm. Code 101.302(g). The Board thus directs Tabor to include the proper caption and case number AC 13-3 on an amended petition. *See* 35 Ill. Adm. Code 101.302(g). Additionally, in order to ensure that the Board fully understands the respondent, respondent should ensure that all motions presented to the Board are clear and legible, such as a typed and printed motion.

Third, the petition improperly omitted the Agency’s name from the petition. 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. The Board directs Tabor to name the Agency as complainant on the amended petition.

Fourth, the Board finds no evidence that the Agency was served with a copy of the petition. Parties in Board adjudicatory proceedings are responsible for the service of all documents they file with the Clerk’s Office. 35 Ill. Adm. Code 101.304(b). The party filing and serving the document is also responsible for providing proof of proper service. 35 Ill. Adm. Code 101.304(d). However, as there is no evidence that Tabor served the Agency with a copy of the petition, the Board directs Tabor to serve a copy of the amended petition upon the Agency, and to file proof of service with the Board.

Finally, the petition does not clearly state the grounds upon which it is made, nor does it offer a concise statement of the position or relief sought. 35 Ill. Adm. Code 101.504. The Board directs Tabor to clearly state the relief he is seeking in his amended petition.

Under these circumstances, the Board directs Tabor to file an amended petition by September 10, 2012, which is the first business day following the 30th day after the date of this order. *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). The amended petition must clearly state one or more acceptable grounds

for contesting the administrative citation. 35 Ill. Adm. Code 108.206. The amended petition must also provide the necessary caption and case number, as well as be submitted on 8 1/2 x 11 inch paper. 35 Ill. Adm. Code 101.302(g). The amended petition must also include the Agency's name on the petition (35 Ill. Adm. Code 108.204), and respondent must also serve a copy of the amended petition on the Agency and file proof of service with the Board (35 Ill. Adm. Code 101.304). Additionally, Tabor must clearly state the relief he seeks. 35 Ill. Adm. Code 101.504. If Tabor fails to file an amended petition in accordance with this order, the Board will dismiss the petition and enter a default order against him, finding the violations alleged and imposing the corresponding \$6,000 civil penalty. Ray Logsdon Estate, AC 05-54 (Apr. 21, 2005) (finding respondent defaulted by not filing an amended petition as directed to cure the deficiency in the original petition).

If Tabor proceeds to contest the administrative citation but does not prevail on the merits of this case, he may have to pay not only the \$6,000 civil 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 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 order on August 9, 2012 by a vote of 5-0.



John T. Therriault, Assistant Clerk
Illinois Pollution Control Board