

ILLINOIS POLLUTION CONTROL BOARD  
August 23, 2012

ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Complainant,	)	
	)	AC 13-7
v.	)	(IEPA No. 175-12-AC)
	)	(Administrative Citation)
ROBERT MANKER,	)	
	)	
Respondent.	)	

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

On July 23, 2012, the Illinois Environmental Protection Agency (Agency) timely filed an administrative citation against Robert Manker (Manker). *See* 415 ILCS 5/31.1(c) (2010); 35 Ill. Adm. Code 101.300(b), 108.202(c). The administrative citation concerns Manker’s facility located at 2287 West Street, Literberry, Madison County. The property is commonly known to the Agency as the “Literberry/Manker” site and is designated with Site Code No. 1378580003. On August 14, 2012, Manker filed a petition (Pet.) with the Board to contest the administrative citation. 35 Ill. Adm. Code 101.300(b)(2), 108.204(b). For the reasons below, the Board accepts Manker’s petition as timely filed, but directs Manker to file an amended petition to cure certain deficiencies.

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 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 6, 2012, Manker violated Sections 21(p)(1), 21(p)(3) and 21(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 in deposition of general construction or demolition debris or clean construction or demolition debris. The Agency asks the Board to impose on Manker the statutory \$1,500.00 civil penalty for each alleged violations, for a total civil penalty of \$4,500.00.

As required, the Agency served the administrative citation on Manker 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 23, 2012. On August 14, 2012, the Board received Manker’s petition to contest the administrative citation. The petition alleges that even before Manker received notice of the charges against him, Manker had already planned on cleaning up the site by getting the lawn in

order and by ordering a ten yard dumpster to dispose of the trash materials. Pet. at 2. Manker's petition further alleges the following: 1) the drywall on the ground was from the partial mobile home used for storage, and not from another job; 2) the stack of flooring was recently placed there because someone was arranged to pick it up; 3) the pile of cardboard boxes was used to start personal fires in a fire pit; 4) some of the tires were originally on vehicles on the site, and the new tires were there to put on vehicles that are sold for scrap; 4) the trusses and lumber are for building a garage in the future; and 5) all of the wood and drywall had just recently been placed there. *Id.*

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. 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*, AC89-277, slip op. at 7 (Aug. 30, 1990). The petition fails to state any of these grounds for appeal.

Additionally, the petition omitted the relevant proceeding caption and number as required by the Board's procedural rules. 35 Ill. Adm. Code 101.302(g). All documents filed with the Board should contain the relevant proceeding caption and number, which in this case is AC 13-7. *See* 35 Ill. Adm. Code 101.302(g). The Board thus directs Manker to include the proper caption and number on the amended petition.

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 Manker to include 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 Manker served the Agency with a copy of the petition, the Board directs Manker to serve a copy of the amended petition upon the Agency, and to file proof of service with the Board.

The Board directs Manker to file an amended petition, accompanied by a certificate of service. The amended petition must state any grounds for contesting the administrative citation. 35 Ill. Adm. Code 108.206. The certificate of service must document that Manker served a copy of the amended petition upon the Agency. 35 Ill. Adm. Code 101.304(d). The amended petition must also provide the necessary caption and number, as well as include the Agency's name on the petition. 35 Ill. Adm. Code 101.302(g); 35 Ill. Adm. Code 108.204. If Manker fails to file this document with the Board by September 24, 2012, which is the first business day following

the 30th day after the date of this order, then the Board will dismiss the petition and enter a default order against Manker imposing a \$4,500.00 penalty.

If Manker proceeds to contest the administrative citation, but does not prevail on the merits of the case, Manker will have to pay not only the \$4,500.00 civil penalty, but also any 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 website at [www.ipcb.state.il.us](http://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 23, 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 flourish extending to the right.

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John T. Therriault, Assistant Clerk  
Illinois Pollution Control Board