

ILLINOIS POLLUTION CONTROL BOARD  
November 15, 2012

ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Complainant,	)	
	)	AC 13-20
v.	)	(IEPA No. 226-12-AC)
	)	(Administrative Citation)
THOMAS E. BARKER and JOHN H. &	)	
DEBRA L. BARKER ,	)	
	)	
Respondents.	)	

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

On October 11, 2012, the Illinois Environmental Protection Agency (Agency) timely filed an administrative citation against Thomas E. Barker and John H. and Debra L. Barker (collectively, respondents). *See* 415 ILCS 5/31.1(c) (2010); 35 Ill. Adm. Code 101.300(b), 108.202(c). The administrative citation concerns respondents' facility located at 305 South Main Street, Clay City, Clay County. The property is commonly known to the Agency as the "Barker-Lewis" site and is designated with Site Code No. 0250055007. For the reasons below, the Board accepts respondents' petition to contest the administrative citation as timely filed, but directs respondents 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 August 30, 2012, respondents violated Sections 21(p)(1), 21(p)(5) and 55(k)(1) of the Act (415 ILCS 21(p)(1), 21(p)(5) and 55(k)(1) (2010)), by causing or allowing the open dumping of waste in a manner resulting in litter and proliferation of disease vectors, and causing or allowing water to accumulate in used or waste tires at the Clay County site. The Agency asks the Board to impose on respondents the statutory \$1,500 civil penalty for each alleged violation, for a total civil penalty of \$4,500.

As required, the Agency served the administrative citation on 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 by November 13, 2012. On November 9, 2012, the Board received a letter from Thomas E. Barker (Barker), 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). In the petition, Barker states that he lives in

McLeansboro, not Clay City, and argues that “[s]ince I don’t live in the area I feel that this is an Uncontrollable Circumstance.” Pet. at 1. Barker continues to state that “Mr. Mark Lewis is the person whom has put the Drums and Tires on the property. Mr. Lewis said the he does have a tire permit under Lewis Auto Repair for 250 or less tires. I don’t know the Site number. The drums have been labeled and all other clean up on this property is done.” *Id.*; 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 is deficient because it is signed only by Barker, but does not identify him as an attorney. If Barker is not an attorney, he cannot represent the other respondents John H. and Debra L. Barker. Although an individual may represent himself or herself, a non-attorney cannot represent another person in a Board adjudicatory proceeding, such as an administrative citation action. See 35 Ill. Adm. Code 101.400(a). The Board therefore directs respondents to properly file an amended petition according to 35 Ill. Adm. Code 101.400(a).

Second, the petition omitted the relevant proceeding caption and case number. 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 13-20. See 35 Ill. Adm. Code 101.302(g). The Board thus directs respondents 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 or Delegated Unit 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 respondents to include the Agency as complainant on the amended petition.

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 respondents to clearly state the relief they are seeking in the amended petition.

Under these circumstances, the Board directs respondents to file an amended petition by December 17, 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 be properly signed and filed according to 35 Ill. Adm. Code 101.400(a). The amended petition must provide the necessary caption and case number (35 Ill. Adm. Code 101.302(g)), and must also include the Agency’s name (35 Ill. Adm. Code 108.204). Additionally, respondents must clearly state the relief they seek. 35 Ill. Adm. Code 101.504. If respondents fail to file an amended petition in accordance with this order, the Board will dismiss the petition and enter a default order against respondents, finding the violations alleged and imposing the corresponding \$4,500 civil penalty. IEPA v. 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 respondents proceed to contest the administrative citation but do not prevail on the merits of this case, respondents may have to pay not only the \$4,500 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](http://www.ipcb.state.il.us). See 35 Ill. Adm. Code 108.504.

IT IS SO ORDERED.

Member J. O'Leary Abstained

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on November 15, 2012 by a vote of 4-0.

A handwritten signature in black ink that reads "John T. Therriault". The signature is written in a cursive style with a long horizontal flourish at the end.

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John T. Therriault, Assistant Clerk  
Illinois Pollution Control Board