

ILLINOIS POLLUTION CONTROL BOARD  
February 7, 2013

COUNTY OF JACKSON )  
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)  
Complainant, )  
)  
v. ) AC 13-35  
) (Jackson No. 077 050 5099)  
CLOYD and CRAIG KARNES, ) (Administrative Citation)  
)  
Respondents. )

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

On January 22, 2013, the County of Jackson, Illinois (County) timely filed an administrative citation against Cloyd and Craig Karnes (respondents). *See* 415 ILCS 5/31.1 (2010); 35 Ill. Adm. Code 101.200(b), 108.202(c). The administrative citation concerns a property located at 10671 Old Hwy 13, Murphysboro, Jackson County. The property is commonly known to the County as the “Murphysboro/Cloyd Karnes” site and is designated with Site Code No. 077 050 5099. On January 22, 2013, Cloyd Karnes filed a petition (Pet.) with the Board to contest the administrative citation. 35 Ill. Adm. Code 101.200(b)(2), 108.204(b). For the reasons below, the Board accepts Cloyd Karnes’ petition as timely filed, but directs Karnes to file an amended petition to cure certain 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 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, 22.51(a), 31.1(c), 42(b)(4), 42(b)(4-5), 55(k) (2010); 35 Ill. Adm. Code 108.

In this case, the County alleges that on December 3, 2012, respondents 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 County 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 February 26, 2013. On January 22, 2013, the Board received Cloyd Karnes’ petition to contest the administrative citation. The petition alleges that the site is not an open dump. Cloyd Karnes’ petition further alleges the following: 1) the clean construction material was the result of storm

damage to his own residence and was in the process of being sorted or stored or disposed of in a dumpster as money allowed; 2) a portion of the wastes in inspection exhibit photos #3 and #4 was gone before notice was sent; 3) vinyl siding in inspection exhibit photo #2 was in the process of being transferred to the ladder rack depicted in inspection exhibit photo #1; 4) once the vinyl siding is moved to the ladder rack, the rack will subsequently be covered; 5) Craig Karnes has made progress in cleaning up his driveway and yard in the last year as money has allowed for the rental of a dumpster; 6) Craig Karnes works 35 hours per week at a wage of \$8.55 per hour. *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. 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 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 89-277, slip op. at 7 (Aug. 30, 1990). The Board directs Cloyd Karnes to provide any reasons for granting a petition according to 35 Ill. Adm. Code 108.206 in an amended petition.

Additionally, the petition omits the relevant proceeding caption and number as required by the Board's procedural rules. 25 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 13-35. *See* 35 Ill. Adm. Code 101.302(g). The Board thus directs Cloyd Karnes to include the proper caption and number on the amended petition.

Third, the petition improperly omits the County's name from the petition. A petition for review must name the recipient of the administrative citation as the respondent and the County 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 Cloyd Karnes to include the County as complainant on the amended petition.

Fourth, the Board finds no evidence that the County 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 Cloyd Karnes served the County with a copy of the petition, the Board directs Cloyd Karnes to serve a copy of the amended petition upon the County, and to file proof of service with the Board.

Fifth, the petition does not clearly state the relief sought by Cloyd Karnes. 35 Ill. Adm. Code 101.504. The Board therefore directs Cloyd Karnes to clearly state the relief he seeks in the amended petition.

Finally, insofar as Cloyd Karnes' petition discusses the actions and circumstances of Craig Karnes, the Board wishes to clarify that individuals not licensed and registered to practice law may appear only on their own behalf in a Board adjudicatory proceeding. 35 Ill. Adm. Code

101.400(a)(1). Although an individual may represent himself or herself, an individual has no privilege or authority to represent others in a formal legal or administrative proceeding unless he or she is admitted to the practice of law. *Id.*, see also 705 ILCS 205/1. If Craig Karnes wishes to contest the administrative citation, he may only do so on his own behalf or through a licensed attorney-at-law. *Id.*

The Board therefore directs Cloyd Karnes to file an amended petition exclusively on his own behalf, 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 Cloyd Karnes served a copy of the amended petition upon the County. 35 Ill. Adm. Code 101.304(d). The amended petition must also provide the necessary caption and number, as well as include the County's name on the petition. 35 Ill. Adm. Code 101.302(g); 35 Ill. Adm. Code 108.204. Additionally, the amended petition must clearly state the relief Cloyd Karnes seeks. 35 Ill. Adm. Code 101.504. If Cloyd Karnes fails to file this document with the Board by March 11, 2013, 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 respondents imposing a \$4,500 penalty.

If Cloyd Karnes proceeds to contest the administrative citation, but does not prevail on the merits of the case, Cloyd Karnes will have to pay not only the \$4,500 civil penalty, but also any hearing costs of the Board and the County. See 415 ILCS 5/24(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 order on February 7, 2013 by a vote of 5-0.



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John T. Therriault, Assistant Clerk  
Illinois Pollution Control Board