

ILLINOIS POLLUTION CONTROL BOARD

April 18, 2013

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	
)	
v.)	AC 13-40
)	IEPA No. 33-13-AC
LLOYD SCHOENHEIT and MARK E.)	(Administrative Citation)
JOHNSON D/B/A M J TIRE SERVICE,)	
)	
Respondents.)	

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

On March 13, 2013, Illinois Environmental Protection Agency (Agency) timely filed an administrative citation against Lloyd Schoenheit and Mark E. Johnson d/b/a M J Tire Service (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 1324 North Court Street, Grayville, Edwards County. The property is commonly known to the Agency as the "M J Tire Service" site and is designated with Site Code No.0474465016. 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 January 30, 2013, respondents violated Sections 21(p)(6) and 55(k)(1) of the Act (415 ILCS 5/21(p)(6) and 55(k)(1) (2010)) by causing or allowing the open dumping of waste in a manner resulting in standing or flowing liquid discharge from the dump site, and causing or allowing water to accumulate in used or waste tires at the site. The Agency asks the Board to impose on respondents the statutory \$1,500.00 civil penalty for each alleged violation, for a total civil penalty of \$3,000.00.

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 April 8, 2013. On April 5, 2013, the Board received a letter from Mark Johnson (Johnson), 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, Johnson states that he is the owner of M J

Tire Service. Pet. at 1. Johnson states that, after the Agency's inspection, he has complied with what the inspector asked him to do, including cleaning up the tires, keeping the water out of the tires, keeping the tires in enclosed buildings, and cleaning up oil. *Id.* Johnson continues by stating that, "[a]s of March 10th of 2013 I shut my doors, and a business bought me out, so I recently relocated tires etc. to this business." *Id.* "I hope the IEPA and the State of Illinois will let me make a 50 dollars a week out of my paycheck for the \$1,500 fine that I do not have. So if you will work with me I can get this solved. . . . I will send \$100 dollars to Agency." *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 Johnson, but does not identify him as an attorney. If Johnson is not an attorney, he cannot represent the other respondent, Lloyd Schoenheit. 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 101.302(g). The Board therefore directs respondents to file an amended petition according to 35 Ill. Adm. Code 101.302(g).

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 13-40. 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 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 the complainant on the amended petition.

Fourth, 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, 108.206. The Board directs respondents to clearly state the grounds for their petition and the relief they are seeking in the amended petition.

Under these circumstances, the Board directs respondents to file an amended petition by May 20, 2013, 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 grounds for their petition and 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 \$3,000.00 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 \$3,000.00 civil penalty, but also any hearing costs of the Board and the County. 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 April 18, 2013, by a vote of 5-0.

A handwritten signature in black ink, reading "John T. Therriault". The signature is fluid and cursive, with the first name "John" and last name "Therriault" clearly legible.

John T. Therriault, Assistant Clerk
Illinois Pollution Control Board