

ILLINOIS POLLUTION CONTROL BOARD
May 15, 2014

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
v.) AC 14-43
) (IEPA No. 890-14-AC)
DAVID R. AND BETH W. MOSER,) (Administrative Citation)
)
Respondents.)

ORDER OF THE BOARD (by D. Glosser):

On April 1, 2014, the Illinois Environmental Protection Agency (Agency) timely filed an administrative citation against David R. and Beth W. Moser (respondents). The administrative citation concerns respondents' facility located at 13546 North Harmony Lane, Opdyke, Jefferson County. The property is commonly known to the Agency as the "Moser, David R. & Beth W" site and is designated with Site Code # 0818155007. For the reasons below, the Board accepts respondents' petition to contest the administrative citation, but directs respondents to file an amended petition to cure deficiencies identified in this order.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2012)), 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) (2012); 35 Ill. Adm. Code 108.

In this case, the Agency alleges that on March 5, 2014, respondents violated Sections 21(p)(1) and (7), of the Environmental Protection Act (415 ILCS 5/21(p)(1) and (7) (2012)) by open dumping waste leading to litter and in a manner resulting in deposition of general construction or demolition debris, or clean construction or demolition debris. The Agency asks the Board to impose on respondent the statutory \$1,500 civil penalty for each alleged violation, for a total civil penalty of \$3,000.

As required, the Agency served the administrative citation on respondent within "60 days after the date of the observed violation." 415 ILCS 5/31.1(b) (2012); *see also* 35 Ill. Adm. Code 101.300(c), 108.202(b). Any petition to contest the administrative citation was due May 2, 2014. On April 30, 2014, David Moser timely filed a petition (Pet.). *See* 415 ILCS 5/31.1(d) (2012); 35 Ill. Adm. Code 101.300(b), 108.204(b).

On April 30, 2014, Mr. Moser filed a petition for review. A petition must set forth recognized grounds for why a respondent believes that the administrative citation was

improperly issued. *See* Ill. Adm. Code 108.206. Those grounds are provided in Section 108.206 of the Board's rules, and include:

- a) the respondent does not own the property,
- b) the respondent did not cause or allow the alleged violation,
- c) the citation was not timely filed or properly served, or
- d) the alleged violation was the result of uncontrollable circumstances. 35 Ill. Adm. Code 108.206. *See also* IEPA v. Bobby G. Myers and Donald D. Myers, AC 07-30, slip op. at 11 (May 21, 2009).

Although the Board accepts respondent's petition as timely filed, the Board finds that the petition is deficient. Mr. Moser's petition for review does not include a statement that sets forth reasons why he believes that the administrative citation was improperly issued. Pet. at 1; *See* 35 Ill. Adm. Code 108.206(b). The Board therefore directs Mr. Moser to include any reasons for granting a petition according to 35 Ill. Adm. Code 108.206(b) in an amended petition.

In addition, while an individual may represent himself before the Board, 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 petition for review was filed by David R. Moser only and not Beth W. Moser. Unless Mr. Moser is an attorney, he cannot represent Beth Moser. Therefore, an amended petition indicating that Mr. Moser is an attorney or signed by both respondents must be filed. *See* 35 Ill. Adm. Code 108.206.


In addition respondents must mail a copy of the amended petition to the Agency and file proof of that the petition was mailed to the Agency with the Board. *See* 35 Ill. Adm. Code 101.304.

Deficiencies of the respondents' petition must be remedied before the case can be accepted for hearing. The Board therefore directs that the respondent file an amended petition with the Board curing the deficiencies including specifically stating one or more recognized grounds on which they contest the administrative citation. *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 and amended petition to cure the deficiency).

If no amended petition is filed with the Board by June 16, 2014, which is the first business day following the 30th day after the date of this order, respondent's petition will be dismissed and a default order will be entered against them, imposing the statutory \$1,500 civil penalty. *See* Ray Logsdon Estate, AC 05-54 (Apr. 21, 2005). If an amended petition is filed pursuant to this order and respondents do not prevail on the merits of the case, respondents will have to pay not only the civil penalty but also any hearing costs of the Board and the Agency. *See* 415 ILCS 5/42(b)(4-5) (2012); 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.icpb.state.il.us *See* 35 Ill. Adm. Code 108.504.

IT IS SO ORDERED.

I, John T. Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on May 15, 2014, 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 stroke at the end.

John T. Therriault, Clerk
Illinois Pollution Control Board