

ILLINOIS POLLUTION CONTROL BOARD

June 6, 2013

COUNTY OF JACKSON,)	
)	
Complainant,)	
)	
v.)	AC 13-39
)	(IEPA No.)
ELMER and GREG ROWE,)	(Administrative Citation)
)	
Respondents.)	

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

On March 8, 2013, the County of Jackson (County) timely filed an administrative citation against Elmer and Greg Rowe (collectively, respondents). The administrative citation concerns respondents' facility located in Jackson County. The property is commonly known to the Illinois Environmental Protection Agency (Agency) as the "Pomona/Elmer Rowe" site and is designated with Site Code No. 077 812 5011. For the reasons below, the Board accepts respondents' amended petition to contest the administrative citation. However, the record does not indicate that respondents properly served either their initial or amended petitions on the County as required by 35 Ill. Adm. Code 101.304(b). The Board directs the respondents to provide service of their amended petition to the County and file proof of such service to the Board within thirty (30) days of the date of this order or risk dismissal of their amended petition and default.

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 County alleges that on January 25, 2013, respondents violated Section 21(p)(1), 21(p)(2), 21(p)(3) and 21(p)(7) of the Act (415 ILCS 5/21(p)(1), (p)(2), (p)(3) and (p)(7) (2010)) by causing or allowing open dumping resulting in litter, scavenging, open burning and the deposition of general or clean construction or demolition debris at the site. The County asks the Board to impose on respondents the statutory \$1,500.00 civil penalty for each alleged violation, for a total civil penalty of \$6,000.00.

As required, the County 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 4, 2013. On April 5, 2013 the Board received a letter from Elmer Rowe, which the Board construed as a petition for review. The petition was timely filed because it was postmarked on or

before the filing date. *See* 415 ILCS 5/31.1(d) (2010); 35 Ill. Adm. Code 101.300(b), 108.204(b).

In an order dated April 18, 2013, however, the Board found that the petition did not satisfy the content requirements of the Board's procedural rules because respondents' petition failed to include Greg Rowe's signature, the proper caption, and a concise statement of the position or relief sought. *See* 35 Ill. Adm. Code 101.302(g), 101.504. Accordingly, the Board directed respondents to file within 30 days an amended petition to cure the aforementioned deficiencies.

On May 20, 2013, respondents filed an amended petition (Am. Pet.). Respondents' amended petition contained the signatures of both Elmer Rowe and Greg Rowe and the relevant proceeding caption as required by 35 Ill. Adm. Code 101.302(g). Am. Pet. At 1-2. In addition, respondents included a concise statement of the position or relief sought as required by Board regulations. *See* 35 Ill. Adm. Code 101.504; Am. Pet. at 2. Respondents deny that an open dumping site has ever been operated at the Pomona/Elmer Rowe Site and request the dismissal of all violations and fines. *See* 35 Ill. Adm. Code 108.206. Additionally, respondents state that Greg Rowe does not own or operate the Pomona/Elmer Rowe Site. Am. Pet. at 1.

The Board accepts the amended petition. However, as noted above, respondents have not filed proof of service on the County and are directed to do so within 30 days of the date of this order or face dismissal of the amended petition and a default order. Upon filing proof of service on or before that deadline, the hearing officer will proceed expeditiously to hearing. The hearing officer will give the parties at least 21 days written notice of the hearing. *See* 35 Ill. Adm. Code 108.300; 415 ILCS 5/31.1(d)(2) (2010). By contesting the administrative citation, respondents may have to pay the hearing costs of the Board and the County. *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 Web site at www.ipcb.state.il.us. *See* 35 Ill. Adm. Code 108.504.

Respondents may withdraw their amended petition to contest the administrative citation at any time before the Board enters its final decision. If respondents choose to withdraw their amended petition, they must do so in writing, unless they do so orally at hearing. *See* 35 Ill. Adm. Code 108.208. If respondents withdraw their amended petition after the hearing starts, the Board will require respondents to pay the hearing costs of the Board and the County. *See id.* at 108.500(c).

The County has the burden of proof at hearing. *See* 415 ILCS 5/31.1(d)(2) (2010); 35 Ill. Adm. Code 108.400. If the Board finds that respondents violated Section 21(p)(1), 21(p)(2), 21(p)(3) and 21(p)(7) of the Act (415 ILCS 5/21(p)(1), (p)(2), (p)(3) and (p)(7) (2010)), the Board will impose civil penalties on respondents. The civil penalty for violating any provision of Section 21(p) is \$1,500 for each violation of each such provision for a first offense and \$3,000 for each violation of each such provision that is a second or subsequent offense. 415 ILCS 5/42(b)(4-5) (2010); 35 Ill. Adm. Code 108.500(a). However, if the Board finds that respondents "[have] shown that the violation resulted from uncontrollable circumstances, the Board shall

adopt a final order which makes no finding of violation and which imposes no penalty.” 415
ILCS 5/31.1(d)(2) (2010); *see also* 35 Ill. Adm. Code 108.500(b).

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 June 6, 2013 by a vote of 5-0.

A handwritten signature in black ink, reading "John T. Therriault". The signature is fluid and cursive, with a long horizontal stroke at the end.

John T. Therriault, Assistant Clerk
Illinois Pollution Control Board